

No. 10387

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRIEDRICH WALTER BERGMANN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 363

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California Central
Division

No. 2304-H Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRIEDRICH WALTER BERGMANN,

Defendant.

COMPLAINT.

The United States of America by Wm. Fleet Palmer, the United States Attorney for the Southern District of California, and James L. Crawford and John Marvin Dean, Assistant United States Attorneys for said District, pursuant to Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (United States Code Title 8, Section 738) alleges:

I.

That the defendant, Friedrich Walter Bergmann, was prior to the 9th day of April, 1937, a native and citizen of The German Reich.

II.

That the said defendant entered the United States on the 13th day of July, 1922, and now resides at 1255 West Seaside, Long Beach, California, within the Southern District of California. [2]

III.

That on the 5th day of November, 1936, the said defendant filed his Petition for Naturalization No. 246-P-52847 in the District Court of the United States for the Southern District of California in which said Petition for Naturalization the said defendant stated that he was attached to the principles of the Constitution of the United States, that it was his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state and sovereignty, and particularly to The German Reich of which at that time defendant was a subject, and that it was his intention to reside permanently in the United States.

IV.

That thereafter on the 9th day of April, 1937, said defendant took the following oath of allegiance in open court as required by law:

"I hereby declare on oath that I absolutely and entirely renounce and abjure any allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich of which I have heretofore been a citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

"In acknowledgment hereof I have hereunto affixed my signature."

V.

On the same date, to-wit, the 9th day of April, 1937, [3] the said District Court for the Southern District of California, relying on the truth and good faith of the representations made by the said defendant in his Petition for Naturalization and on his oath of allegiance, entered its order admitting him to citizenship in the United States, and thereupon certificate of naturalization No. 4262178 was issued to him by the clerk of said Court.

VI.

That all of the representations aforesaid made by the said defendant in his Petition for Naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, of which he was then a subject, but in fact intended to retain allegiance and fidelity to the said German Reich; and in that he did not in fact intend to reside permanently in the United States.

VII.

That all of the representations aforesaid made by the said defendant in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said, The German Reich; in that he did not in fact intend to support the Constitution and laws

of the United States of America against all enemies foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance thereto.

VIII.

That the said Certificate of Naturalization was procured by the said defendant fraudulently and illegally and for the purpose of obtaining the rights, privileges and the protection of American citizenship without intending to assume the duties thereof, [4] and that said certificate of Naturalization is subject to cancellation.

Wherefore, it is prayed that an order be entered revoking and setting aside the aforesaid decree of naturalization, cancelling the said certificate of naturalization and directing the surrender of said certificate of naturalization to the clerk of this Court; and that the defendant be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said certificate of naturalization; and for such other and further relief as may be proper.

WM. FLEET PALMER,
United States Attorney,
JAMES L. CRAWFORD,
Assistant U. S. Attorney.
JOHN MARVIN DEAN,
Assistant U. S. Attorney,

[Endorsed]: Filed July 3, 1942. [5]

[Title of District Court and Cause.]

ANSWER

Defendant answers plaintiff's Complaint as follows, to-wit:

I.

Answering paragraphs VI, VII and VIII, defendant denies, specifically and generally, each and all of the allegations in said paragraphs contained.

And for a First Further Separate and Distinct Affirmative Defense, Defendant Alleges:

I.

That in the month of January, 1911, defendant departed from Germany accompanied by his brother, Edmund O. Bergmann, who had been appointed defendant's guardian prior to said departure; said guardianship was made necessary by reason of defendant's minority in that defendant was then under the age of eighteen (18) years, to-wit, of the age of seventeen (17) years and ten (10) months. [6]

II.

Defendant's destination was Toronto, Canada, via New York City, at which port defendant arrived on the S. S. Washington on February 11, 1911; from New York City defendant proceeded to Canada where he resided until July, 1922, at which time he departed therefrom; defendant entered the United States via Eastport, Idaho on July 11, 1922; from Eastport defendant went directly to Spokane, Washington where his brother, Charles Bergmann resided;

it was defendant's intention to reside permanently in Spokane, Washington, where defendant's said brother, Charles, was owner of the Siberian-Arctic Fur Company.

III.

During defendant's residence in Canada he resided at the following places therein for the following approximate periods of time, to-wit:

1. 1911-1913. Toronto, Ontario, employed as bookkeeper by Greef-Bredt & Co., an importing and exporting wholesale Dry Goods firm.

2. 1913. At Edmonton, Alberta for approximately four (4) months.

3. 1913-1916. Calgary, Alberta, employed as City Sales Representative for A. B. Cushing Lumber Co.

4. 1917-1920, Edmonton, Alberta. Sales representative for Edmonton Metal Works, Ltd., and Economy Foundry Co., of Portage La Prairie, Manitoba.

5. 1920-1922. Prospected on own account for mineral deposits in northern Alberta and British Columbia.

6. July, 1922. Departed from Winnipeg, Manitoba, for the United States entering the United States via Eastport, Idaho. [7]

IV.

That during defendant's entire residence in Canada as hereinbefore alleged, defendant obeyed the laws of Canada and conducted himself with decency and propriety, and was never charged with nor accused of any violation of law.

V.

That after defendant reached Spokane, Washington, as hereinbefore alleged, defendant resided therein and was employed by his brother, Charles Bergmann until sometime in 1923, when he came to Long Beach, County of Los Angeles, State of California, where he has since continuously resided and made his home, except for the following temporary absences, to-wit:

1. During the month of July, 1929, defendant made a short trip to Mexico as the guest of Mr. and Mrs. Ernest Lindquist; Mr. Lindquist was, and is, a rancher and wholesale nurseryman living in Hemet, California.

2. 1930, 1931 and part of 1932. Two (2) archaeological exploration trips to Hawaii and return, via Wilmington and San Francisco, California.

3. Part of 1932, 1933 and 1934. Two (2) archaeological and ethnological excursions to French Oceania and British Cook Island; that the dates of defendant's departure and re-entry are duly entered in defendant's second passport issued by the German Consulate at Los Angeles, California and which is in the possession of plaintiff, defendant having been required to surrender the said passport to plaintiff during citizenship proceedings which resulted in defendant being granted citizenship by plaintiff in the year 1937. [8]

VI.

That at no time since leaving Germany in 1911 has defendant ever returned to Germany, even for a visit; defendant's sole and only interest in Germany or the German Reich since his departure therefrom in 1911 has been his mother, Flora Adele Bergmann of Dresden, Saxony, Germany, who is now over eighty (80) years of age, and to whose support defendant has contributed until July 17, 1941, at which time he made his last remittance to his mother for her support; since July 17, 1941, defendant has made no remittance whatsoever to his mother; defendant represents to plaintiff and to this Honorable Court that it is his prayer and wish when the present war is ended to return to Germany for a visit with his mother, if she be still alive.

Defendant has no recollection whatsoever of his father who became divorced from his mother, defendant is informed and believes, and therefore alleges upon information and belief, when defendant was four (4) years of age; defendant has no knowledge of his father's people or relatives; so far as defendant knows the only relative defendant has living in Germany, other than his mother, is an aunt on his mother's side, Mrs. Adele Praeger of Torgau, Prussia, and who is now, if alive, well past the age of eighty (80) years; defendant has never corresponded with said person nor ever contributed to her support.

VII.

During all of defendant's residence in the United States he has been a dutiful and law abiding resi-

dent; since becoming an American Citizen defendant has whole-heartedly performed, to the best of his ability, his full duty as such citizen; defendant loves the United States of America and has given his unreserved allegiance thereto, and does still give his allegiance thereto, and will continue to do so until his death; said allegiance on defendant's part is wholehearted, without equivocation, mental reservation, or [9] secret evasion whatsoever; defendant has no allegiance on earth to any government or nation other than the United States of America.

VIII.

Defendant owns no property of any kind, real, personal or mixed, outside of the confines of Los Angeles County, California; defendant's possessions are all within the territorial confines of said county, and nowhere else; among defendant's possession is a Defense Bond, Series E, of the face value of One Thousand Dollars (\$1000.00); said bond was purchased by defendant for the sum of Seven Hundred and Fifty Dollars (\$750.00) on December 19, 1941; said purchase represented approximately fifteen per cent (15%) of defendant's net income for the year 1941; that it is defendant's purpose and intention, and was his purpose and intention when he made the aforesaid purchase, to devote a like percentage of his net income for such purpose so long as the national need so to do exists.

IX.

Defendant has three (3) extensive archaeological collections and one (1) shell collection acquired on

his trips and excursions as alleged in Paragraph V; the value of said collections is approximately Twelve Thousand Dollars (\$12,000.00); the aforesaid three (3) archaeological collections valued at Eleven Thousand Six Hundred Dollars (\$11,600.00) were loaned by defendant to the Los Angeles County Museum from 1932 to March 17, 1941, at which time said museum requested defendant to remove them for lack of display space at said museum; that said shell collection valued at Four Hundred Dollars (\$400.00) has been loaned to the Sixth District Agricultural Association of California since 1932 and is still on display by said Association, all of said collections were by defendant's last will and testament of January 2, 1942 devised and bequeathed to the Los Angeles County Museum, the Sixth District Agricultural Association [10] and the City of Long Beach, a municipal corporation.

X.

That in the defendant's last will and testament he further devised and bequeathed the bulk of his estate, to-wit: not less than seventy-five per cent (75%) thereof; to the Long Beach Young Men's Christian Association, the Long Beach Salvation Army, the City of Long Beach, and the Toronto Young Men's Christian Association; defendant is unmarried and it has been, and is defendant's desire that whatever he may have accumulated prior to his death, and be subject to his disposition at the time of his death, shall go in the above proportion to the above-described social agencies and city.

XI.

Defendant has never, since his departure from Germany in 1911 as hereinbefore alleged, subscribed to German magazines or periodicals; defendant has never been affiliated with, belonged to, supported, nor attended German or German-American meetings, lodges, clubs, societies or groups; specifically, defendant never has had, and does not now have, any sympathy for, connection with, nor membership in the German-American Bund or any similar organization; defendant has been, and is, and will continue to be, a true and loyal citizen of the United States of America, anxious, willing, and proud to serve the country of his adoption with all of his time, talents, property, and life.

For a Second Further Separate and Distinct Affirmative Defense, Defendant Alleges:

I.

That defendant has never performed military service for the German Reich, or its predecessors; that one of the principal reasons why defendant left Germany in 1911 was to avoid compulsory military service in the German Army; that defendant has always been opposed to German militaristic policies.

[11]

II.

Defendant is opposed to autocracy and to class rule based upon birth or to governmental rule of any kind based on other than the will of the majority of the people as expressed by free elections;

defendant believes wholeheartedly in the Republic of the United States of America and the principles upon which it was founded, as set forth in the Declaration of Independence, the Constitution of the United States, the Gettysburg Address, and the views of our government as expressed by great Americans.

III.

Defendant respectfully submits that on this earth he has no political allegiance but that of a true American, no country but the United States, no flag but the Stars and Stripes.

IV.

Defendant believes devoutly in the Christian religion; Jesus Christ is to defendant the Son of God and defendant's personal Saviour; in this faith defendant states to this Honorable Court that the statements made in this Answer are wholly and completely true, without reservation, equivocation or mental evasion whatsoever.

WALHFRED JACOBSON

Attorney for Defendant

(Duly Verified.) [12]

(Affidavit of service by mail.)

[Endorsed]: Filed Aug. 17, 1942. [13]

[Title of District Court and Cause.]

OPINION

Appearances:

For the Plaintiff:

Leo V. Silverstein
United States Attorney
James L. Crawford
John Marvin Dean
Assistant U. S. Attorneys

For the Defendant:

Walhfred Jacobson
Fred N. Howser
Long Beach, California [14]

Yankwich, District Judge:

The Government seeks to cancel the certificate of naturalization issued to the defendant, a former citizen of Germany, on April 9, 1937.

As grounds for the cancellation, the Government has alleged, in its Complaint, that the certificate was obtained by fraud. More particularly, it has alleged that, contrary to his representations and to his oath of allegiance, the defendant was,

“not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to The German Reich,

of which he was then a subject, but in fact intended to retain allegiance and fidelity to the said German Reich."

and that

"he did not in fact renounce and abjure all allegiance and fidelity to the said, The German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance thereto."

The defendant has denied these allegations and has protested his loyalty of The Government of the United States.

Has the charge been proved?

Naturalization is a privilege. It is granted only upon strict compliance with the conditions laid down by the Congress. (8 U.S.C.A., Sec. 701 et seq.) As said by the Supreme Court in *Luria v. United States*, 1913, 231 U.S. 9, 23:

"These requirements plainly contemplate that the [15] applicant, if admitted, should be a citizen in fact as well as in name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the Government and himself.

the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past." (See *United States v. Beda*, 1941, 2 Cir., 458, 459; *Samras v. United States*, 1942, 2 Cir., 125 F(2) 879, 881)

Thus, in many respects, more is demanded of an alien than of a native-born citizen. A native-born citizen need not be literate to exercise his civil rights, unless the state law so requires. But an alien must know the English language. (8 U.S.C.A., Sec. 704) No matter how well educated he might be in other languages, ignorance of English is a bar to citizenship.

A native-born citizen may be a conscientious objector. An alien, even a woman, who refuses to bear arms, cannot be naturalized. (*United States v. Schwimmer*, 1929, 279 U.S. 644; *United States v. Macintosh*, 1931, 283 U. S. 605; *United States v. Bland*, 1931, 283 U.S. 636; *In re Warkentin*, 1937, 7 Cir. 93 F(2) 42)

A native-born citizen may be immoral. And, unless he is convicted of a felony, he cannot be denied his civil rights. But an alien must be of good moral character before he can be admitted to citizenship. (8 U.S.C.A. Sec. 707)

More, a native-born citizen may be opposed to the principles of our constitutional government. And, unless he actually advocates its overthrow,

by force, he may go unmolested. But an alien must be "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States". (8 U.S.C.A., Sec., 707) [16]

When, through concealment, a certificate of naturalization is obtained in violation of any of these requirements, there is fraud, for which the certificate may be cancelled. (8 U.S.C.A. Sec. 738; *United States v. Ginsberg*, 1817, 243 U.S. 274; *Maney v. United States*, 1928, 278 U. S. 16; *United States v. Kramer*, 5 Cir., 1919, 262 Fed 395; *Schurman v. United States*, 9 Cir., 1920, 264 Fed. 917; *United States v. Glaser*, 7 Cir., 1923, 289 Fed 255; *United States v. Woerndle*, 1923, 9 Cir. 288 Fed 47; *Rowan v. United States*, 1927, 9 Cir., 18 F(2) 246; *Turlej v. United States*, 1929, 8 Cir. 31 F(2) 696)

The spirit of these requirements and of the oath of renunciation and allegiance prescribed by the Congress (8 U.S.C.A., Sec., 735) I have tried to express in addresses delivered at various times to persons about to be naturalized. I repeat a portion of one of them, as reproduced in the press.

"The oath you are about to take requires the renunciation of allegiance to the country of your birth, and the assumption of a new loyalty to the United States.

"Americanism does not brook a divided allegiance. You are not requires, however, to surrender any religious ideal, nor to give up any of your cultural heritage. American civilization is a composite pattern to which many dif-

ferent racial and national groups have contributed.

“However, loyalty to the United States implies the surrender of whatever there may be in the culture of your country which is contrary to the fundamental ideals of America.” * * * * *

“The chief characteristic of American constitutional government is its insistence on the rights of the individual, rights, of which he cannot be deprived by the state. This heritage is embodied in our Bill of Rights.

“Fascism, Nazism, Communism postulate the omnipotence [17] of the state and do not recognize the rights of the individual which may be asserted against it. They are the opposite of what you have been taught about the American government. The oath requires you to defend the Constitution and the laws of the United States against enemies foreign and domestic. This means that you must defend them against political philosophies opposed to them. If, after leaving this courtroom, you attempt to foster these alien philosophies in America, it will show that you do not mean this oath you take before God.” (From Los Angeles Times Sunday Magazine, January 21, 1940, page 11)

The facts here must be considered in the light of these principles.

Citizenship once granted, should not be revoked except upon positive proof of fraud. Allowance

must be made for statements, made in the heat of passion. At times, people are "goaded" into making extravagant statements. We must also take into consideration the fact that in and out of Congress, prior to America's entry into the war, most fantastic opinions regarding the European war and of the part the United States should play in the world crisis, were uttered with impunity.

In fact, the most extreme forms of denunciation of everyone from the President down who took a friendly attitude towards Britain occurred in the Congress and the Press. The motives of the German Reich were extolled. Those of Britain and of the United States were denounced. (For some of these utterances, See *Time Magazine*, Vol XL, No. 20, November 16, 1942, p. 20, Col 1) An otherwise gentle woman poet, advised the United States to accept totalitarianism and ride along on the "wave of the future."

Such dissidence is of the essence of our freedom. We not only allow it. We protect it by constitutional guarantee. (See my recent article, *Freedom of the Press in Prospect and Retrospect*, 1942, 15 So. Calif. Law Review, 322, 332)

But here we have more than the advocacy of a policy [18] which, later events proved unrealistic and detrimental to the United States. In season and out of season, without provocation, the defendant, both before and after America's entry into the war, has upheld the cause and governmental philosophy of present-day Germany and has berated those of the United States. The two are inconsistent.

One cannot profess or serve both, without disloyalty to one.

To my mind, the facts testified to by the many witnesses who appeared in this case gave expression to the feeling which the defendant himself entertained when, in his statement of facts filed in connection with his application for citizenship, dated November 5, 1936, in answer to the question: "26. If necessary, are you willing to take up arms in defense of this country?", he first wrote "Yes". But after discussing the answer with the Examiner, he caused this reservation to be added: "But will not take up arms in an attack upon Germany". When informed by the Examiner that refusal to bear arms against a particular country may result in a denial of citizenship, he caused the reservation to be deleted. He states that the Examiner left him for about fifteen minutes and that he notified him of his change of attitude when he returned. ("I then and there changed my mind",—to use his own words.)

The fact was not called to my attention when, on April 9, 1937, I acted on the Examiner's recommendation that the defendant be admitted to citizenship. (Note 1)

To refer to oneself as a Nazi when being introduced to a stranger, to give Hitler's salute, "Heil Hitler", on taking leave from non-German speaking persons, to praise Hitler, to identify oneself with him by saying "We,—Hitler" will do thus and so, "use gas"), to approve and advocate world dominion by Germany and Japan, to express a de-

sire to return to Germany to fight on her side, and to live there "like a white man", to condone the Japanese Attack on Pearl Harbor ("They had to do it"),—even if we disregard entirely the defendant's profane references to the President of the United States,—evinced a disloyalty, which must have been clearly present at the time of naturalization. [19] They constitute *frvad* most foul. They cannot be waved aside by attributing them to boastfulness,—as counsel for the defendant have endeavored to do in their cross examination of the Government's witnesses,—or claiming, as the defendant sought to do at the trial, that he was either jesting or his meaning was not understood. For one thing, we are not dealing with an ignorant person who, laboring under limitations of language may utter, in the heat of argument, words which do not express his thoughts clearly. Persons under such deficiency may, at times, cause expletives to take the place of thought. It is almost proverbial that foreigners quite often learn to curse in English long before they learn to speak it. Unfortunately, at times, that is about all they learn.

But the defendant is not in this class. He is a man of good educational background, whose English when spoken or written, is correct, who, while giving an alien intonation, at times, to his words, does not seem to be lacking, at any time, in his felicity to bring English words to his assistance. In fact, even in his volubility, to which witnesses referred repeatedly, and which was quite evident during his examination in court,—he never was at

a loss to find the right and grammatically correct manner of expressing his thought. Nor are we dealing *herewith* isolated outbursts. More than a dozen persons from all walks of life, from humble neighbors to bank executives, have testified to the defendant's constant protestations of allegiance to Germany and to its cause, to the repeatedly unsought, unprovoked, and, often, uncalled-for advocacy of German's ideology and the justification of the war-like means used to impose it on the world.

Most of these incidents were not denied. The defendant merely sought to explain them away. (Note 2) They lead to the conclusion that when the defendant was admitted to citizenship on April 9, 1937, he was not "attached to the principles of the Constitution of the United States and well-disposed to the good order and happiness of the United States." (8 U.S.C.A. Sec. 707) And that he swore falsely when he took the oath of renun- [20] ciation and allegiance. For he bore no fealty to the United States and did not intend to renounce allegiance and fidelity to the German Reich.

"Loyalty or allegiance is, necessarily, of slow growth; therefore, somewhat involuntarily, not fully subject to the will. Those who lightly, for temporary advantages, undertake to change their allegiance, are liable to overlook the deep-seated nature of this feeling; but the fact that not until afterwards, in times of stress, is it made manifest that the desires, suffered to lie dormant, are stronger for their native than their adopted country, although this fact may

not be fully realized at the time of their naturalization, renders it none the less a legal fraud for the applicant to fail to disclose his true, although latent feeling in such a matter."

(Judge Edward E. Cushman, in *United States v. Herberger*, D.C. Wash. 1921, 272 Fed 278, 291)

(And see: *United States v. Tapolicsanyi*, 1930 *e* Cir., 40 F(2) 255, 257; *United States v. Shapiro*, D. C. Cal. 1942. 43 Fed. Sup. 927, 929, 930)

The certificate of naturalization is ordered cancelled. Formal findings and judgment to follow.

Dated this 23rd day of November, 1942.

LEON R. YANKWICH,

United States District Judge.

NOTES TO TEXT

1. As revealing are some of his statements made to an agent of the Federal Bureau of Investigation on May 5, 1942, we reproduce the following:

(1) "I want very much to see this present war over quick. I am disgusted with the white man for getting into this war. The white people should realize that east is east, west is west, north is north and south [21] is south. They should not go beyond their rights. The whites should attend to their own business." * * *

(2) "There must always be a Germany. A country of 80 million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but bar-

ren and desert land with the possible exception of German East Africa." * * *

(3) "I didn't join in as much as I don't believe because I'm an American citizen. believe in German Clubs and the like. ~~^ It is not~~

However,
~~that I'm not proud of being a German. ^ I am~~

having been
proud of ~~being~~ a German. It is a great country. Germany is one of the nations that has had

FWB

world wide admiration for science and commerce. ~~are not asleep, German people are wonderful. During the the last war every one fought for our Fatherland, I came to this country to better myself."~~

In these connected passages there crops out the familiar German and Japanese justification of their ruthless aggression. In the first, we have the Japanese cry of "Asia for Asiatics" and the defense of the Japanese war aims as brought on by the white man's aggression.

"I am disgusted with the white man for getting into this war", might well have been written by a Japanese apologist for "The new order in East Asia". (See, Wilfrid Fleisher, *Volcanic Isle*, 1941, especially Chapter 11, pp. 320 et seq)

No amount of rationalization can change this statement, made six months after the United States was forced into war by a treacherous attack against it by Japan, into the mere expression of an idealistic disappointment in the failure of the Caucasian nations to take proper measure, at the end of the

last war, to avoid its repetition, as the defendant sought to do at the trial.

In the second excerpt, we have the all-too-familiar statement of Germany's plea for colonies, the Lebensraum theory, which advocates and defends conquest, on the plea of pressure of population on a "have-not" nation.

Hitler expressed these thoughts in an address to German workers on the meaning of this war. [22]

"It is a struggle of two worlds.

Forty-six million English rule and govern a total territory of roughly 40,000,000 square kilometers in this world.

Forty-five million Italians have an area of utilizable land of hardly half a million square kilometers.

Eighty-five million Germans have a living space of Hardly 600,000 square kilometers, and this only through their own initiative.

Man living not on phrases, not on declarations, not even on Weltanschauungen, he lives on what the earth yields him through his labor in the form of foodstuffs and raw materials.

Just as internally developing tensions between rich and poor must be balanced, thus the life of the peoples one cannot claim everything and leave nothing to others.

They say: 'We English, we Americans, we French, are the "haves"', and whoever "has not" must be satisfied with not having.' To some, I was the representative of the 'have

nots'." (Quoted in Gustave Stolper; *This Age of Fable*, 1942, p. 171)

The last passage is given, both in the form in which it was reproduced by the agent after conference with the defendant and as it read after the defendant edited it. Standing alone, it might perhaps be considered mere boastful pride of ancestry, but taken with the other statements, with the plea for help to Germany after the war, ("All American citizens have a duty after the war to help Germany"), they exhibit an exultation in a misunderstood and unconquerable Germany, which does not spell loyalty to the United States. "There must always be a Germany", is more than mere braggadocio. The defendant's verbal protestations of loyalty to the ideals of the United States sound hollow when compared with such warm-hearted defense of Germany and all its deeds.

2. Their force is not overcome by the testimony of witnesses produced by the defendant, that, in their presence, he uttered loyal sentiments or that he was thrifty ("miserly", as one of his [23] witnesses characterized him in a deposition), hard working, eager to accumulate money, proud of his financial success, and satisfied with the community, (Long Beach, California), in which he had achieved it. A good portion of this testimony was purely negative. Much stress was laid on the fact that, at various times, the defendant had stated that he would leave some of his possessions, such as an archaeological collection of South Sea materials,

to some public body, and others to the Salvation Army and the Y.M.C.A. which had befriended him when in need. Unexecuted or promised philanthropy ("charitable intention", as the defendant called it) is not necessarily a badge of loyalty.

[Endorsed]: Filed Nov. 23, 1942. [24]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter having come on regularly for trial without a jury on the 17th day of November, 1942, in the courtroom of the Honorable Leon R. Yankwich, United States Post Office and Court House Building, Los Angeles, California, the plaintiff having appeared and having been represented by Leo V. Silverstein, United States Attorney for the Southern District of California, and John Marvin Dean, Assistant United States Attorney for said district, and the defendant having appeared and having been represented by Walhfred Jacobson and Fred N. Howser, attorneys at law, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That the defendant Friedrich Walter Bergmann was born in Waldo, Saxony, Germany, on March 6, 1893.

II.

That the defendant entered the United States on the 13th day of July, 1922. [25]

III.

That on the 5th day of November, 1936, the defendant filed his Petition for Naturalization No. 246-P-52847 in the District Court of the United States, for the Southern District of California, in which petition the defendant stated that he was attached to the principles of the Constitution of the United States, that it was his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state and sovereignty, and particularly to The German Reich, of which at that time defendant was a subject, and that it was his intention to reside permanently in the United States.

IV.

That on the 9th day of April, 1937, the defendant took the following oath of allegiance, as required by law, in the United States District Court for the Southern District of California:

“I hereby declare on oath that I absolutely and entirely renounce and abjure and allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich of which I have heretofore been a citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies foreign

and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

“In acknowledgment hereof I have hereunto affixed by signature.” [26]

V.

That on the 9th day of April, 1937, the United States District Court, for the Southern District of California, entered its order admitting the defendant to citizenship in the United States; that thereupon Certificate of Naturalization No. 4262178 was issued to him by the clerk of said court.

VI.

That the representations made by the said defendant in his petition for naturalization that he was attached to the principles of the Constitution of the United States at the time of the filing of the petition were false and fraudulent, in that the defendant was not in fact attached to the principles of the Constitution of the United States.

VII.

That the representations made by the defendant in his petition for naturalization at the time of the filing thereof that he intended to renounce absolutely and forever all allegiance and fidelity to The German Reich were false and fraudulent, in that the defendant did not intend to renounce absolutely and forever all allegiance and fidelity to The German Reich.

VIII.

That the representations made by the defendant in his oath of allegiance that he intended to renounce and abjure all allegiance and fidelity to The German Reich were false and fraudulent, in that he did not in fact intend to renounce and abjure all allegiance and fidelity to The German Reich.

IX.

That the representations made by the defendant in his oath of allegiance that he intended to support the Constitution and laws of the United States of America against all enemies, foreign and domestic, were false and fraudulent, in that he did not intend to support the Constitution and laws of the United States [27] of America against all enemies foreign and domestic.

X.

That the representations made by the defendant in his oath of allegiance that the oath was taken without any mental reservation or purpose of evasion was false and fraudulent, in that defendant took said oath with mental reservations and with the purpose of evasion.

CONCLUSIONS OF LAW

That Certificate of Naturalization No. 4262178 was procured by the said defendant fraudulently and illegally and for the purpose of obtaining the rights, privileges, benefits and protection of American citizenship without intending to assume the duties thereof.

Dated this 28th day of November, 1942.

LEON R. YANKWICH

United States District Judge

Approved as to form as provided by Rule 8:

WALHFRED JACOBSON

By FRED N. HOWSER

Attorneys for Defendant.

Nov. 27, 1942

[Endorsed]: Filed Nov. 30, 1942. [28]

In the District Court of the United States in and
for the Southern District of California, Central Division

No. 2304-H Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRIEDRICH WALTER BERGMANN,

Defendant.

DECREE OF CANCELLATION

This cause having come on regularly for trial on the 17th day of November 1942, and the court having made and entered its findings of fact and conclusions of law herein,

It Is Ordered, Adjudged and Decreed that the order of the United States District Court, for the Southern District of California, made and entered

on the 9th day of April, 1937, admitting the defendant herein Friedrich Walter Bergmann, to citizenship in the United States of America, and the Certificate of Naturalization, No. 4262178, issued pursuant thereto are, and each of them is, hereby set aside and declared null and void and ordered canceled, and the defendant is hereby ordered to deliver to the Clerk of this court said Certificate of Naturalization for cancellation and the clerk of this court will accordingly cancel of record the said Certificate of Naturalization.

It Is Further Ordered that the defendant be and he is hereby forever restrained and enjoined from setting up or claim- [29] ing any rights, privileges, benefits or advantages whatsoever under said decree of naturalization hereby ordered canceled.

It Is Further Ordered That a Certified copy of this decree be sent by registered mail to the said defendant, in care of Walhfred Jacobson, 612 Jergins Trust Building, Long Beach, California, one of the attorneys for defendant.

Dated: November 28th, 1942.

LEON R. YANKWICH

United States District Judge

Approved as to form as provided by Rule 8:

WALHFRED JACOBSON

By FRED N. HOWSER

Attorneys for Defendant.

Judgment entered Nov. 30, 1942. Docketed No. 30, 1942 CO Book 12 Page 620. Edmund L. Smith, Clerk, Louis J. Somers, Deputy.

[Endorsed]: Filed Nov. 30, 1942. [30]

NOTICE OF APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California:

Notice is hereby given that Friedrich Walter Bergmann, defendant above-named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Decree of Cancellation which was entered on the 30th day of November, 1942, in Civil Order Book No. 12 at page 620.

Dated: February 19, 1942.

WALHFRED JACOBSON

Attorney for Defendant.

[Endorsed]: Filed Feb. 19, 1943. [31]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California:

The appellant intends to rely on the following points in the above-entitled appeal:

I.

That the District Court erred in holding as a matter of law that defendant was guilty of fraud through concealment in obtaining his certificate of naturalization, the evidence being conclusively that

defendant made a full and frank disclosure to the naturalization officers.

II.

That the District Court erred in holding as a matter of fact that defendant was guilty of concealing his state of mind, the evidence conclusively showing an entire absence of concealment on the part of defendant. [32]

III.

That the District Court erred in holding that defendant upheld the cause and governmental philosophies of Germany.

IV.

That the District Court erred in attributing to defendant, a man of ordinary education, profound philosophical ideologies and geo-political concepts upon the basis of defendant's statements that the world admired German science and commerce and that he was disappointed at the failure of the Caucasian nations after the last war to create a world order along league of nation's ideas.

V.

That the District Court erred in holding that defendant refused to bear arms against Germany.

VI.

That the District Court erred in holding that the Court was not fully informed of defendant's answers to questions in his naturalization application, the testimony of a government witness being

that the Court had personally questioned defendant prior to the granting of citizenship to defendant.

VII.

That the District Court erred in holding that defendant was not in fact attached to the principles of the Constitution of the United States.

VIII.

That the District Court erred in holding that defendant swore falsely when he took the oath of renunciation and allegiance.

IX.

That the District Court erred in holding that defendant repeatedly protested his allegiance to Germany.

X.

That the District Court erred in not granting defendant's motion for dismissal after the conclusion of the plaintiff's case [33] in chief.

XI.

That the District Court erred in not making findings on defendant's First and Second affirmative defenses.

XII.

That the District Court erred in holding that Certificate of Naturalization No. 4262178 was subject to cancellation and in ordering said certificate cancelled.

XIII.

That the findings and conclusions of law and decree of cancellation are not supported by a preponderance of the evidence.

XIV.

That defendant was prevented from receiving a fair trial by many circumstances of a prejudicial nature. One such circumstance was that the Court which heard the case had theretofore granted defendant's petition for naturalization and, in doing so, had apparently overlooked certain matters contained in defendant's petition and which matters the Court held established defendant's alleged fraud. Another such circumstance was the identifying of defendant's testimony with speeches and writings of German leaders, with which speeches and writings defendant was not familiar. Another circumstance was the general atmosphere of prejudice toward a person of German descent accused, during war times, of disloyalty to the United States. This condition affected the Court, though probably not consciously.

Dated: February 19, 1943.

WALHFRED JACOBSON

Attorney Defendant.

[Endorsed]: Filed Feb. 19, 1943. [34]

[Title of District Court and Cause.]

STIPULATION THAT CLERK MAY SEND
EXHIBITS TO CIRCUIT COURT OF
APPEALS

It Is Hereby Stipulated by and between Leo V. Silverstein, United States Attorney, attorney for plaintiff, and Walhfred Jacobson, attorney for defendant, that the Exhibits on file in the above-entitled action may be sent to the Circuit Court of Appeals, Ninth Circuit, in lieu of copies thereof.

Dated: February 19, 1943.

LEO V. SILVERSTEIN,
United States Attorney
JAMES L. CRAWFORD,
JOHN MARVIN DEAN,
Assistant United States
Attorneys

By JOHN MARVIN DEAN,
Attorney for Plaintiff
WALHFRED JACOBSON,
Attorney for Defendant

It Is So Ordered. 2/18/1943.

J. F. T. O'CONNOR,
Judge.

[Endorsed]: Filed Feb. 19, 1943. [35]

[Title of District Court and Cause.]

ORDER PERMITTING SUBSTITUTION OF
PHOTOSTATIC COPY OF EXHIBIT

Good cause appearing therefor,

It Is Ordered that a photostatic copy of Government's Exhibit No. 4 in the above case may be substituted for the original in the files of the Clerk of this Court.

Dated this 23rd day of December, 1942.

LEON R. YANKWICH,

United States District Judge

Rec'd original Exhibit 4.

JOHN MARVIN DEAN

12-22-42

Photostatic copy Received 12-29-42.

JOHN A. CHILDRESS

[Endorsed]: Filed Dec. 23, 1942. [36]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California.

You are hereby requested to include in the record on appeal the complete record and all the proceedings and evidence in this action, including specifically the following papers:

1. Complaint.
2. Answer.
3. Reporter's Transcript of Evidence, including, all exhibits of plaintiff and defendant.
4. Opinion.
5. Findings of Fact and Conclusions of Law.
6. Decree of Cancellation.
7. Notice of Appeal.
8. Clerk's Certificate.
9. Statement of Points and Authorities on which [37] appellant intends to rely on appeal.
10. Designation of Contents of Record on Appeal.

Dated: February 19, 1943.

WAHLFRED JACOBSON

Attorney for Defendant

Received copy of the within Designation of Contents of Record on Appeal this 19 day of February, 1943.

JOHN MARVIN DEAN

Asst. U. S. Attorney

Attorney for Plaintiff

[Endorsed]: Filed Feb. 19, 1943. [38]

[Title of District Court and Cause.]

CASH BOND ON APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California.

Whereas the defendant in the above-entitled action has appealed to the Circuit Court of Appeal of the United States of America, Ninth Circuit, from a judgment or decree which was entered on the 30th day of November, 1942, in Civil Order Book No. 12 at page 620, now, therefore

I, Lucile Geiselman, do hereby deposit with you the sum of Two Hundred and Fifty Dollars (\$250.00) in lawful money of the United States, and I do undertake and promise to plaintiff on the part of defendant that the said defendant will pay all such damages and costs as may be levied or assessed against defendant, if the appeal is dismissed, or said judgment or decree is affirmed or modified, not exceeding the sum of Two Hundred and Fifty Dollars (\$250.00) in which amount I acknowledge myself bound. [39]

Dated: February 19, 1943.

LUCILE GEISELMAN

1063 Crescent Heights Blvd.,
Los Angeles, California.

(Duly verified.)

[Endorsed]: Filed Feb. 19, 1943. [40]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, hereby certify that the foregoing pages

numbered from 1 to 41 inclusive contain full, true and correct copies of: Complaint; Answer; Opinion; Findings of Fact and Conclusions of Law; Decree of Cancellation; Notice of Appeal; Statement of Points on which Appellant Intends to Rely on Appeal; Stipulation and Order that Clerk may send Exhibits to Circuit Court of Appeals; Order Permitting Substitution of Photostatic Copy of Exhibit; Designation of Contents of Record on Appeal and Cost Bond on Appeal which, together with original Reporters' Transcript and original Exhibits transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$8.55 which amount has been paid to me by Appellant.

Witness my hand and the Seal of said District Court this 11 day of March, A. D., 1943.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE,

Deputy Clerk.

[Title of District Court and Cause.]

Before The Honorable Leon R. Yankwich

Appearances:

For the Government:

Leo V. Silverstein,

United States Attorney; and

James L. Crawford,

Assistant United States Attorney; and

John Marvin Dean,

Assistant United States Attorney.

For the Defendant:

Wahlfred Jacobson, Esq.,

517 Jergins Trust Building,

Long Beach, California; and

Fred N. Howser, Esq.,

Jergins Trust Building,

Long Beach, California.

Los Angeles, California,

November 17, 1942.

10:00 A. M.

The Court: Are there any ex parte matters?

(No response.)

Calendar matters.

The Clerk: No. 2304 Civil, United States of America v. Friedrich Walter Bergmann for trial.

Mr. Dean: The Government is ready, your Honor.

Mr. Jacobson: At this time I ask leave to associate with me Fred N. Howser for the defendant.

The Court: All right.

Mr. Dean: May I make a brief opening statement, your Honor?

The Court: Yes.

Mr. Dean: Because of the peculiar nature of this case, your Honor, I feel it is appropriate for a very brief opening statement to be made by the Government.

The defendant, of course, is charged with fraud in obtaining his American citizenship. The basis for the Government's contention of fraud is that he reserved allegiance to The German Reich at the time the oath of citizenship was taken. Not only that, but at the time the oath was taken, it was the intention of the defendant to return to Germany to live permanently.

It is the contention of the Government that this is not a case in which mere casual statements have been made, state- [2*] ments made in the heat of passion or made casually in taverns or barber shops, statements which perhaps upon calm reflection would have been regretted by the defendant.

As has been indicated in the pre-trial memorandum, the Government's case will consist largely of testimony of witnesses who, over a period of years, have observed the conduct and heard the utterances of the defendant; and it is our contention that this will clearly show at the time the oath of allegiance

*Page numbering appearing at top of page of original Reporter's Transcript.

was taken, that mental reservations were present and the defendant in fact owed allegiance to The German Reich.

The Court: All right, Mr. Jacobson.

Mr. Jacobson: I do not care to make an opening statement, your Honor.

The Court: All right.

Mr. Dean: Mr. Williams, will you take the stand, please?

ERNEST C. WILLIAMS

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Ernest C. Williams.

Direct Examination

By Mr. Dean:

Q. Mr. Williams, what is your full name?

A. Ernest Conklin Williams.

Q. And your occupation? [3]

A. I work for the Los Angeles County Museum.

Q. You live in Los Angeles, do you?

A. I do.

Q. Do you know the defendant Friedrich Walter Bergman, Mr. Williams?

A. I have seen him. I can't say I know him.

Q. Will you tell us what the nature of your acquaintance is, if any?

(Testimony of Ernest C. Williams.)

A. I was one of two that helped deliver a collection that belonged to Mr. Bergmann, to his home in Long Beach from the museum.

Q. What was that collection? What did it consist of?

A. Well, as far as I know, South Sea Island material, I didn't see it.

Q. What was the approximate date of the delivery of the collection?

A. About April, 1941.

Q. April of 1941? A. Yes.

Q. Mr. Williams, I am going to ask you to talk a little louder so counsel for the defendant can hear you. A. Yes, sir.

Q. Directing your attention to April of 1941 and to the occasion which you just related, did you have a conversation with the defendant?

A. I did. [4]

Q. Who was present during that conversation?

A. The defendant and Mr. Shields who was with me, and later another acquaintance of Mr. Bergmann.

Q. What time of day did it take place?

A. Approximately from noon on.

Q. Where?

A. At Mr. Bergmann's auto court in Long Beach.

Q. Will you relate what that conversation was as best you can recall it?

A. Well, Mr. Bergman seemed to be very——

Q. Just a moment, Mr. Williams. I don't want

(Testimony of Ernest C. Williams.)

you to indicate what he seemed to be. Just tell us the substance of the conversation as best you can recall it.

A. Well, he attacked the administration; Roosevelt particularly.

Q. What did he say about the administration and Mr. Roosevelt?

A. Well—(pause)

The Court: How did the thing start? What brought it up? You were about to do some business. What brought on the conversation? That would be more important than saying, "He attacked Mr. Roosevelt."

The Witness: It is very hard right now to say just how the conversation started. We talked about Mr. Bergmann's collection, how he got it, where he got it; and naturally, the interest at the time was on the war and Mr. Bergmann [5] started in with an attack upon the administration, saying he didn't like Mr. Roosevelt, he didn't like the Jewish influence in the administration, and matters like that.

Q. By Mr. Dean: Did you have any conversation with Mr. Bergmann concerning photographs?

A. Yes, we did. During the conversation Mr. Bergmann stated that he had seen a photograph of a British warship which was then in New York Harbor and which had been damaged. He claimed to have seen this photograph which had been given to him by the German consul in Los Angeles. He described the damage to the vessel, which side it

(Testimony of Ernest C. Williams.)

was on, and the approximate amount of the damage.

Q. Did you have any conversation with him concerning the first World War?

A. Yes, we did.

Q. Will you tell us what that conversation was?

A. Mr. Bergmann said he had been a German soldier in the first World War, that he had served in Turkey on a gun crew, and described conditions generally in the Turkish campaign.

Q. Did he have any conversation with you at this time concerning his brother or one who is referred to as his brother?

A. Yes. He claimed to have had a brother in the services of the Reich who he said was a submarine instructor who had been sent to Japan as such. [6]

Q. Did you have any conversation with him at this time concerning Adolf Hitler?

A. Yes. Mr. Bergmann professed to admire Hitler very much, his practices and principles.

Q. Did you have any conversation——

The Court: Just a moment. What did he say? That is more important.

The Witness: Hitler was a very great man and that his principles were very fine.

Q. By Mr. Dean: Do you recall anything else that was said concerning that?

A. No, not now.

Q. Did you have any conversation with him concerning the Nazis?

(Testimony of Ernest C. Williams.)

A. Yes. He professed to admire the Nazi principles, and after Mr. Shields and I had finished storing his collection, he stepped back and gave the Nazi salute.

Q. Did he say anything at the time he gave the Nazi salute? A. "Heil Hitler."

Q. Did Mr. Bergmann say anything to you at this time about his political beliefs or affiliations?

A. No, not as such. He professed to admire the United States but still attacked the Government and I could not reconcile those two statements.

Q. Do you recall anything else that was said about the [7] Nazis at this time?

A. No, I don't.

Mr. Dean: I think that is all of the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

By Mr. Jacobson:

Q. Mr. Williams, this conversation occurred prior, of course, to the entry of the United States into the war? A. Yes, it did.

Q. Did you see the picture of the British boat?

A. No.

Q. Do you recall Mr. Bergman giving you the name of the German consul? A. No.

Q. Now, Mr. Bergmann did express admiration for the principles of the United States?

A. I wouldn't call it "admiration for the principles." He said the United States was a great country. As I recall, he did not go beyond that.

(Testimony of Ernest C. Williams.)

In my testimony I said I could not reconcile the two statements, his professed love for Hitler and his attack on Mr. Roosevelt and his professing of love for the United States.

Q. What did he say about President Roosevelt specifically?

A. I don't think I am prepared to give you any definite [8] statement that was made that far back.

Q. Is it your impression at this time, approximately a year and a half later, that his criticism of President Roosevelt was in the nature of differences of opinion with President Roosevelt's policies or views?

A. Yes, I think it could be constructed as such.

Q. Was any discussion had about what his beliefs were in the way of being either an isolationist or an interventionist?

A. Only this: Mr. Bergmann made a statement as to what would happen to Britain if the United States intervened in the war.

Q. What did he say would happen to Great Britain?

A. He said Great Britain would be gassed within 24 hours.

Q. That was in April of 1941. Is that right? Is that when you had the conversation; in April of '41?

A. Yes.

Q. What were you doing; returning his collection?

A. Returning his collection. That is right.

(Testimony of Ernest C. Williams.)

Q. And you delivered it, I suppose, in trucks to Long Beach? A. In one truck.

Q. Was that the first time you had met Mr. Bergmann? A. That is right.

Q. You hadn't helped him unpack the collection? [9] A. No.

Q. You had been with the museum some length of time prior to 1941?

A. About a year and a half.

Q. I suppose you had seen his collection on display? A. I had seen his collection, yes.

Q. Now, with reference to Mr. Hitler, do you recall how the conversation came up?

A. No, I don't. I don't recall how the conversation started. It started, I suppose, like all conversations do; somebody makes a remark, and somebody else answers it, and the conversation starts.

Q. Had Mr. Bergmann preceded this portion of the conversation by telling you the physical labor he had indulged in in building that place on West Seaside? A. No.

Q. Had he told you how he had hauled dirt in there and filled in this land? A. No.

Q. Had there been a discussion about physical fitness and vigor?

A. Yes, as applied to soldiers in the German Army.

Q. With reference to Mr. Hitler, didn't Mr. Bergmann comment specifically on Hitler's youth program as he understood it?

A. He might have. I don't remember. [10]

(Testimony of Ernest C. Williams.)

Q. Is it possible he told you he liked the idea of his physical development, teaching the boys and girls not to use tobacco, narcotics and alcohol?

A. I don't remember.

Q. Didn't Mr. Bergmann then go on to say that, as to that youth program as he understood it, he was in hearty accord?

A. He might have. I don't recall that.

Q. Did he further state that his idea was that this program of Hitler's would produce a nation of strong, vigorous and healthy boys and girls?

A. Well, his remarks might be construed as that. I wouldn't say definitely.

Q. Does that question strike any response in your memory? A. Not at all.

Q. You didn't make any notes, of course, of the conversation, did you?

A. No. In fact, I kept more or less quiet and listened to the conversation between the other people.

Q. Did anything come up in the conversation that, apparently, Hitler's purposes had been misunderstood by him; that he was simply building an aggressive militaristic army instead of just building health? A. Yes.

Q. Did he say that that had disappointed him or made [11] him wonder at Hitler's purposes?

A. Not as I recall.

Q. You do not? A. No.

Q. It did come up, however, those two phases of the conversation, namely, that he understood

(Testimony of Ernest C. Williams.)

Mr. Hitler was trying to build a nation of strong, vigorous boys and girls——

A. I believe so.

Q. ——and then that later it seemed that recent developments had indicated Mr. Hitler was really concerned not so much with strong youth as he was with strong soldiers?

A. I wouldn't go into details on the conversation that far. I really wouldn't know.

Q. I suppose this conversation took place while you were unloading and stacking these goods?

A. That is right.

Q. How were these goods packed? I mean, were they in big boxes?

A. Yes, in large packing boxes.

Q. Very large? A. Yes.

Q. Where did you pack them away?

A. He had a vacant store room or a small garage. I forget what his use for the little building was.

Q. That place you refer to as "Mr. Bergmann's auto [12] court," there are several small apartments and garages facing Seaside Boulevard which in turn face the Pacific Ocean?

A. That is right.

Q. Now, with reference to the first World War did Mr. Bergmann state how many brothers he had?

A. He might have. I don't remember. I recall only the statement of the one.

Q. Do you recall the name of the brother?

(Testimony of Ernest C. Williams.)

A. I don't think he mentioned it.

Q. At this time do you have any recollection of him mentioning his brother Kurt Bergmann?

A. I don't recall.

Q. Do you have any recollection of him mentioning the name of Edmund Bergmann?

A. No, definitely not.

Q. Do you have any recollection of him stating that one of his brothers had been killed in World War I?

A. He might have. I don't recall it.

Q. Did Mr. Bergmann tell you in the course of this conversation what his rank had supposedly been in the German Army in World War I?

A. I don't think so.

Q. There was conversation, however, about a brother who had been stationed near the Turkish border in World War I as a German soldier?

A. I understood from the conversation that it was Mr. [13] Bergmann who was in Turkey.

Q. Yes; but there was conversation about such a service on the part of either Mr. Bergmann or somebody you were talking about?

A. That is right.

Q. You did not see the photograph of this British ship? A. No.

Q. Now, with reference to this "Heil Hitler," had there been any joking back and forth about German goose stepping or the clicking of heels?

A. Not on my part. Of course, we weren't all together all the time. I couldn't say what went on

(Testimony of Ernest C. Williams.)

when I was in the truck bringing something else out, or somewhere else. I wouldn't say about that. But for my part, no.

Q. There hadn't been any talk like that?

A. Not that I know of.

Q. Did you return this salutation by any kind of gesture yourself? A. No.

Q. Do you recall whether Mr. Bergmann was smiling or laughing at the time he gave this "Heil Hitler" salutation?

A. Oh, he seemed to be very jolly during the whole day.

Q. He was very happy, was he?

A. Oh, yes. [14]

Q. His face wasn't serious and set when he said, "Heil, Hitler," was it?

A. I wouldn't say definitely. He was in front of me at the time, or just in front of me to one side. As I say, this place we were working in was very narrow. We couldn't all get in there at once. So I wouldn't say definitely what the expression was.

Q. But he had been laughing and pleasant and agreeable all afternoon? A. Yes.

Q. I suppose there was some discussion about his collection, was there not?

A. Some little discussion, yes.

Q. Not a great deal?

A. Not a great deal.

Q. The fact of the matter is, it was pretty

(Testimony of Ernest C. Williams.)

hard work unloading that merchandise and unpacking it in the garage.

A. Oh, definitely.

Mr. Jacobson: Just a moment, please.

(Conference between counsel.)

The Court: Did he make the Hitler salute when you were about ready to leave, or while you were talking about things in general?

The Witness: After we had finished storing the material in there. We didn't leave for some time after that.

The Court: What brought it on? [15]

The Witness: I suppose the finish of the job.

The Court: Well, was he taking leave of you, or were you taking leave of him?

The Witness: Well, we expected to leave at that time—the material was stored—but the conversation still kept on for some reason or other after this work was done.

The Court: Did he say it as a parting observation?

The Witness: Well, yes.

The Court: As you were going away?

The Witness: Everything was finished; yes.

The Court: You can't tell whether like the Virginian, he said it with a smile?

The Witness: No, I couldn't.

The Court: Or whether he was serious?

The Witness: No.

The Court: But he was not leaving, going away from you?

(Testimony of Ernest C. Williams.)

The Witness: No.

The Court: I mean when he said that?

The Witness: No.

The Court: Had there been any conversation preceding the time he said that?

The Witness: The conversation was continuous from the time we arrived until we left.

The Court: When did you fellows do any work?

The Witness: We talked most of the time.

The Court: I thought you were unpacking his collection. [16]

The Witness: We did.

The Court: But you made a talk fest out of it?

The Witness: Absolutely.

The Court: Is that correct?

The Witness: Absolutely.

The Court: How long after he gave the Hitler salute and said, "Heil Hitler" did you leave or did he go away?

The Witness: I imagine we stayed an hour and a half.

The Court: You continued to talk?

The Witness: Yes.

The Court: What was his attitude? Did he click his heels?

The Witness: That is right. He gave a typical Nazi salute.

The Court: Such as you have seen in pictures?

The Witness: Yes; that is right.

The Court: What did he do after that? What did he say after that?

(Testimony of Ernest C. Williams.)

The Witness: We kept talking about the general world situation. We put our gear into the truck and just talked until we left.

The Court: Continuously talked?

The Witness: That is right.

The Court: All right.

Mr. Dean: May I ask a question on redirect, your Honor? [17]

The Court: Yes. Have you finished, Mr. Jacobson?

Mr. Jacobson: Yes. Oh, may I ask leave to ask another question?

The Court: Go ahead and finish.

Q. By Mr. Jacobson: I want to ask you, Mr. Williams, do you remember how Mr. Bergmann was dressed? A. (Pause)

Q. I don't mean item for item.

A. He had on an old pair of trousers and no shirt.

Q. And no shirt? A. Yes.

Q. Did he have any shoes?

A. Yes, I think he had shoes on, but I don't recall whether they were sneakers or leather shoes, or what they were.

Q. But he was bare to the waist?

A. Yes.

Q. Were they long pants or just trunks?

A. Pants.

The Court: What time of year was it?

The Witness: It was in April, I believe.

The Court: April?

(Testimony of Ernest C. Williams.)

The Witness: Yes. Anyway, it was warm. We were doing some heavy lifting.

The Court: He was assisting you, was he?

The Witness: Yes. [18]

The Court: All right; go ahead.

Mr. Jacobson: That is all.

Redirect Examination

By Mr. Dean:

Q. Mr. Williams, did you have any conversation with the defendant concerning his affiliation with the Nazi party?

A. Yes, I believe that entered in to it.

Q. What was the conversation as accurately as you can recall it?

A. I believe he claimed to be a member, but I wouldn't say at this time whether that was so or not.

Q. Do you recall anything he did say?

A. No, I wouldn't say that.

Mr. Dean: That is all the redirect examination, your Honor.

The Court: All right; step down, Mr. Williams.
(Witness excused.)

The Court: These witnesses may be excused, gentlemen, so they can go about their business?

Mr. Dean: That is one reason I called Mr. Williams first; so he could return to his business.

The Court: All right; you may go, Mr. Williams.

Call your next witness.

Mr. Dean: Mrs. Pelliter, will you take the stand, please? [19]

LOUISE PELLITER

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Louise Pelliter, P-e-l-l-i-t-e-r.

Direct Examination

By Mr. Dean:

Q. Mrs. Pelliter, will you tell the Court your full name, please? A. Louise Pelliter.

Q. Where do you live?

A. I live on 7th Street.

Q. In Long Beach? A. Yes, sir.

Q. What is your occupation?

A. Well, I am a hotel owner.

Q. Do you know the defendant Friedrich Walter Bergmann? A. Yes.

Q. How long have you known him?

A. About seven years.

Q. What is the basis of your acquaintance with him? In what way have you known him?

A. Mr. Bergmann has a court down on West Seaside, and I own a hotel on West Seaside. Mine is in the 1400 block.

Q. Directing your attention to the month of

(Testimony of Louise Pelliter.)

April, 1939, did you have a conversation with Mr. Bergmann? [20] A. Yes.

Q. Who was present during that conversation?

A. Well, at different times, of course, I have had many conversations with him, but my brother was present sometimes, and the manager of my hotel at times.

Q. Did you have any conversation with him in April of 1939 concerning a trip to Germany?

A. Mr. Bergmann wanted to lease me one of his courts there, the one he lives in at the present time, because he was going away. He said he was going away to Germany and might be gone two or three years.

Q. Where did that conversation take place?

A. It took place, I would say, out on the boardwalk. He worked in the lot across the street from my hotel.

Q. Who else was present at that time?

A. I don't know who would be present at that time. When I looked at his court——

The Court: That isn't the question. Was anybody else near you listening to the conversation? That is what the question is.

The Witness: He came down to my hotel to see about leasing his court, and at that time my manager was present. The night he came down and talked to me about leasing his court, he wanted me to come up and lease his court.

Q. By Mr. Dean: In order to clear this up, Mrs. Pelliter, at the time Mr. Bergmann told you

(Testimony of Louise Pelliter.)

he was planning [21] to leave for Germany and might be gone for two or three years, was anyone else standing close to you when he made that statement? A. Yes.

Q. Who was it?

A. The manager of my hotel.

Q. What is his name?

A. Mr. Anderson.

Q. Did you have any conversation with Mr. Bergmann concerning United States war bonds?

A. Yes. Mr. Bergmann said——

Q. Just a moment, please.

When did that conversation take place?

A. It took place a few evenings after that up in my hotel apartment.

Q. Would you fix that as about April of 1939?

A. Yes, it was in April.

Q. Who else was present, if anybody, at that time?

A. Well, the manager of my hotel and my brother was present that evening.

Q. Will you tell us to the best of your recollection what that conversation was?

A. Well, the conversation—he told us that United States bonds were not safe and not to buy United States bonds, not to invest any money in them at all.

Q. How did the conversation happen to arise, Mrs. [22] Pelliter?

A. They were talking about investing money. He said he had come to the United States with

(Testimony of Louise Pelliter.)

very little money and he had made a good deal here.

Q. Do you recall anything else concerning the war bonds? Or is that the substance of the conversation?

A. No. We talked quite a little bit on how to invest money and how to make money on the small amount we had.

We asked him if he thought it was—what he thought about buying bonds, and he said his opinion was not to buy them, not to buy United States bonds, that he didn't think they were any good.

Q. Did you at any time have any conversation with Mr. Bergmann concerning the relative intelligence of the German and American people?

A. Yes, I did.

Q. I want to fix the time and place of this conversation. Was this during the same conversation?

A. No, I wouldn't say it was at the same time.

Q. Will you fix the time and place for us?

A. The times Mr. Bergmann came to my house was practically every evening until he showed me his courts.

Q. Every evening during the month of April would you say?

A. During a week. Not every evening, but two or three times during that week we were getting together on the [23] deal of buying his courts.

Q. And it was during this period that the conversation took place? A. Yes.

(Testimony of Louise Pelliter.)

Q. Do you recall anybody else being present during the conversation?

A. These two parties were present during the whole time because they managed the hotel and I lived there, but I wasn't managing at the time. I lived in the hotel, but wasn't managing it.

Q. One of the two parties was Mr. Anderson?

A. Yes, sir, and Mr. Wyatt, my brother.

Q. Will you tell us what the conversation was concerning the relative intelligence of the German and American people?

A. He said he had arrived here with a small amount and had invested in one lot; that he had gradually gone up to high money, and he felt the German people were very intelligent and we didn't know how to make money; that he could make more money than we could because he knew how to do it. And then he offered me money for the hotel, said he had plenty of money to invest.

Q. Was that the substance of the conversation?

A. Well, that was part of it.

Q. Do you recall anything else that pertained to the relative ability or intelligence of the German and American [24] people?

A. Yes. He said the American people didn't have the intelligence that the German people had. He said he respected the German people more.

Q. Did you ever have any conversation with the defendant concerning burial in United States' soil?

(Testimony of Louise Pelliter.)

A. Yes. We asked him if he didn't think the United States was a fine place to live in. He said yes, he thought it was a good place to live, but he wouldn't want to be buried here.

Q. Was this the same time as the previous conversation which you have related?

A. Yes, it was during that week. The main visits I had with him was during that week he showed me his courts.

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: All right; cross-examine.

Cross Examination

By Mr. Houser:

Q. Mrs. Pelliter, how long have you resided in the city of Long Beach?

A. About 13, 14 years.

Q. During that period of time you have been engaged entirely in the leasing of properties and renting them out? A. Yes.

Q. And engaging yourself in the hotel business? [25] A. Yes.

Q. Approximately how long have you maintained this hotel you refer to down adjacent to Mr. Bergmann's property?

A. I would say about seven years.

Q. During that period of time did you have occasion to observe him off and on?

A. Yes.

(Testimony of Louise Pelliter.)

Q. And you observed that he has always been there at his property?

A. Well, whenever I saw him he was working in vacant lots and down on the boardwalk.

Q. He always dressed in the same fashion or manner, did he?

A. Well, he had on just little shorts every time I saw him.

Q. He was always naked down to his waist, was he not? A. Yes.

Q. In winter or summer?

A. He didn't wear many clothes. He has on more clothes this morning than whenever I saw him.

The Court: Maybe he is wise.

Q. By Mr. Houser: The fact of the matter is, the people down there have complained about Mr. Bergmann running around with little clothes on?

A. The womenfolk have felt insulted at times.

[26]

Q. That has only been within recent years that, by local ordinances in Long Beach, people were permitted to wear trunks and go without uppers. Isn't that true?

A. I couldn't tell you how long. I mean how long they have been doing that, but he has been doing it ever since I have known him.

Q. Do you recall the approximate date when this present world conflict started?

A. I wouldn't tell you that I know the exact date. I leased the court next door to him in May,

(Testimony of Louise Pelliter.)

and I know it was just before I leased the court, because I wanted to lease his court before that.

Q. The fact of the matter is, Mrs. Pelliter, you did go to Mr. Bergmann and inquire if you could lease his premises? A. No.

Q. You knew that the property was vacant, didn't you? A. Yes.

Q. And that it was furnished with new linens and dishes and silverware?

A. No, I didn't know that until I looked at it. He showed it to me after that.

Q. You have been in the apartment, have you not? A. Yes, after that.

Q. Now, when you did go in the apartment—approximately what time was that? [27]

A. It was around noon.

Q. Was that in April of 1939? A. Yes.

Q. Did the apartments that you observed have furniture in them? Were they furnished?

A. Well, they had furniture in them, but he had it covered up.

Q. The furniture was covered in what manner?

A. Well, the furniture had canvas and stuff like that on it.

Q. And sheets?

A. Yes. It was covered up, and I didn't notice with what.

Q. All the dishes were put away?

A. I didn't notice the dishes. They probably were.

(Testimony of Louise Pelliter.)

Q. How about other furnishings other than the main furniture itself?

A. It was all covered up, all of it.

Q. Now, you say that you live in the same apartment with the manager?

A. No, I did not. My manager had a room in the rear of the apartment and managed the hotel for me. I had an apartment up in front on the second floor.

Q. When Mr. Bergman came to your hotel, where did these conversations take place?

A. Up in my apartment. [28]

Q. On each of these occasions you had your manager as well as some other person there?

A. Yes. The bell rings in my apartment, and until I would retire in the evening, I would keep the bell in my apartment and then shift it over to the manager's room.

Q. You say that in this first conversation which took place in April of 1939 he said he might be gone two or three years?

A. That wasn't the first one. That was the one pertaining to the questions asked. I had talked to Mr. Bergmann many times before that, but that was the one in reference to the question you are asking. That was in April, yes.

Q. But he did tell you that he was going to be gone only two or three years?

A. Well, he made that specification that he might be gone two or three years, and he wanted his apartment in good hands.

(Testimony of Louise Pelliter.)

Q. And you understand then from your conversation that Mr. Bergmann fully intended to return to Long Beach?

Mr. Dean: I object to that, your Honor, on the ground it is immaterial.

The Court: Objection sustained.

Mr. Howser: Did the Court sustain the objection?

The Court: Yes, because it is not the understanding; it is what he said that matters.

Q. By Mr. Howser: Mrs. Pelliter, do you remember in [29] that particular conversation whether or not there was any reference to Mr. Bergmann's mother?

A. Well, I don't remember anything about his mother.

Q. You don't recall any conversation wherein he stated that his mother was in Germany and he intended to visit her? A. No.

Q. Now, you say that there was some discussion about United States war bonds? A. Yes.

Q. Were those war bonds, or were they United States bonds?

A. I couldn't tell you that. He said, "War bonds." Not to invest in United States bonds.

The Court: We can take judicial notice of the fact that the United States was not at war at the time. They were Defense Bonds. They don't even call them War Bonds now. That has not been changed because the authority for issuing antedates the declaration of war.

(Testimony of Louise Pelliter.)

Q. By Mr. Howser: Then, Mrs. Pelliter, the bonds that you discussed at that time were United States bonds?

Mr. Dean: Excuse me just a moment. I am going to object on the grounds it calls for a conclusion as to what they were. I think the conversation is proper, but not the conclusion.

The Court: She has referred to war bonds. She is using the wrong designation, because there were no war bonds at the time. Go ahead. The inquiry is proper. [30]

Q. By Mr. Howser: Mrs. Pelliter, just what was the general discussion you had at that time with him?

A. About what? About the investment of our money?

Q. Yes. A. Just what I said.

Q. You had money to invest, did you?

A. Well, I always had a little.

Q. And you were discussing with Mr. Bergmann what you could put your money in that would give you the quickest and best return?

A. No. He told me what he was putting his money in, and he was advising us to do the same thing.

Q. At that time he told you that, as far as a quick return, and making a great amount of money is concerned, that United States war bonds were not good?

A. No. He advised me not to buy them.

(Testimony of Louise Pelliter.)

Q. Well, can you tell us now just what he said when he advised you that?

A. He said not to buy them.

Q. Did he tell you anything other than that?

A. I don't recall anything else.

The Court: Were you discussing other investments? What other investments were you discussing?

The Witness: Well, we were—the West Side in Long Beach is oil property at the present time but then it didn't amount to so much and I naturally was enthused over my [31] investment down there. I had made a good investment and was enthused over it, and I wanted to buy other property, and he said he was buying all the vacancies he could up there. And then our conversation led to the fact that we felt we would put our money in some kind of bonds, or something like that. We felt it was safer than vacant ground. That was all called shanty town by everybody that knew it. So Mr. Bergmann led up to the fact that he didn't approve of that investment and said so, said he didn't.

The Court: Were you discussing bonds of every character?

The Witness: No, we didn't.

The Court: Interest on bonds?

The Witness: No, we didn't discuss interest at all.

The Court: Well, the question of returns on investments?

The Witness: No, we didn't discuss the returns

(Testimony of Louise Pelliter.)

on investments. We were discussing what was our opinion on the best way to invest money. We suggested something about bonds, and he said not to. He kept telling us not to.

The Court: Did you bring up the conversation about Government bonds——

The Witness: No.

The Court: ——or did you talk about bonds in general?

The Witness: No. We called it “United States bonds” at that time. At that time, as you say, there were no war bonds.

The Court: You called them “United States bonds”?

The Witness: Yes. [32]

The Court: Did he say why he didn’t think they were good?

The Witness: He talked about Roosevelt at the time, and he talked about our administration, and he said he didn’t think, with the debt we were going into, that they would be good.

The Court: All right; did he mention the fact that they give a very low rate of interest?

The Witness: He didn’t mention interest, I don’t think, but he said we were going so far in debt that he didn’t think they would be good to buy. He said the money that was being invested now in loans and things like that, that he didn’t think they were the thing to buy for a good investment.

Q. By Mr. Howser: Mr. Bergmann is a very

(Testimony of Louise Pelliter.)

shrewd operator as far as securities and bonds are concerned, and that is his general reputation in the immediate neighborhood, is it not, Mrs. Pelliter?

Mr. Dean: I object to that on the ground it is immaterial.

The Court: We are not concerned with reputation. The objection will be sustained.

Q. By Mr. Howser: Mrs. Pelliter, did he tell you what to invest your money in?

A. I don't think so. I don't remember that.

Q. That is, from the conversations you had no conclusions were arrived at between you what you would invest your money in? [33]

A. No, I don't think so.

Q. Do you recall whether or not there was any conversation about Mr. Bergmann telling you that he felt the best place you could put your money would be to go out and buy lots that were in that oil lease down there?

A. Well, no, he didn't say, "Buy lots," because I buy property. I buy hotels.

Q. Did he tell you to buy the landowner's royalties that were in the lease?

A. No, he didn't tell me to.

Q. He told you that that was what he was doing to make his money, did he not?

A. No, he didn't tell me he was buying the landowner's royalties at all. He said he had royalties, but he didn't say anything about buying any.

(Testimony of Louise Pelliter.)

Q. Did he tell you he was investing money by buying the property itself?

A. Yes; he said he was buying all the vacants he could down there.

Q. And that that was his idea of making money in investing money?

A. He said the people didn't know the value of the ground he was buying.

Mr. Howser: That is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, step down. [34]

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Huggins, will you take the stand, please?

F. H. HUGGINS

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: F. H. Huggins; H-u-g-g-i-n-s.

Direct Examination

By Mr. Dean:

Q. Will you tell the Court and counsel for the defendant your full name, Mr. Huggins?

A. Fred H. Huggins.

(Testimony of F. H. Huggins.)

Q. Where do you reside, Mr. Huggins?

A. 54 Santa Clara Avenue.

Q. That is in Long Beach? A. Yes.

Q. How long have you resided in Long Beach?

A. Since November 6, 1940.

Q. Since November 6, 1940? A. Yes.

Q. I am going to ask you to speak just as clearly and as loudly as you can so they all can hear you, Mr. Huggins. A. Yes.

Q. Do you know the defendant Freidrich Walter Bergmann? A. Yes, I met him. [35]

Q. When was the first time you met him?

A. Oh, some time in the fore part of '41 or the latter part of '40.

Q. Did you have a conversation with him at the time you first met him?

A. I don't think so.

Q. What is the nature of your acquaintance, Mr. Huggins?

A. Just a passing acquaintance.

Q. It is not a business relationship then?

A. Yes.

Q. Directing your attention to the fall of 1941 did you have a conversation with Mr. Bergmann concerning lend-lease or America sending supplies to Britain? A. Yes, I did.

Q. Where did the conversation take place?

A. Out in his yard.

Q. In his yard? A. Yes.

Q. Where is that located?

A. That is just south of me, the next lot.

(Testimony of F. H. Huggins.)

Q. Who was present at the time of this conversation?

A. Well, there wasn't anyone; just he and I.

Q. What time of day was it? Do you recall?

A. Well, I think it was along about noon, just a little before noon, 11:00 o'clock. [36]

Q. Will you tell us to the best of your recollection what the conversation was?

A. He said he didn't like the way the administration was going. If he knew that the United States was going to furnish England with material, that he didn't know whether he would become a United States citizen or not.

Q. Was there anything else that was said about that time concerning that subject?

A. Well, I don't know whether it was that day or not, but we were talking. He wanted to sell me his courts, and he said——

Q. Excuse me just a moment, Mr. Huggins. Was there anything else said at any time concerning lend-lease or the shipping of supplies to Great Britain by the United States?

A. He condemned that every time he had a chance to.

Q. How many chances did he have? On how many different occasions?

A. At least two or three.

Q. And all about the fall of 1941. Is that right? A. Yes.

Q. Did you have any conversation with Mr. Bergmann concerning the Japanese?

(Testimony of F. H. Huggins.)

A. Yes, he said he would like too——

Q. Excuse me just a moment. When did this take place?

A. That was some time in '41.

Q. Was it close to the time of this first conversation [37] you related?

A. It was probably a month later.

Q. Where did this conversation take place?

A. Well—(pause).

Q. If you recall, Mr. Huggins.

The Court: I think you had better talk louder, Mr. Huggins, so the people over there can hear you.

Q. By Mr. Dean: Now, do you recall my last question to you, Mr. Huggins?

A. I would like to have it read.

Mr. Dean: Would you read it, please, Mr. Reporter?

(The question was read.)

The Witness: Well, I think it was right out near the gate.

Q. I see. A. In the driveway.

Q. Was anyone else present at the time?

A. No, just he and I.

Q. Will you tell us what the conversation was concerning the Japanese?

A. Well, he said he wanted to sell me the property or the lease: that he thought he would like to go and make a visit in Japan; that the people of Japan were very nice people.

(Testimony of F. H. Huggins.)

Q. Now, is that the substance of the conversation?
A. That is about it.

Q. Did you have any conversation at any time with the [38] defendant concerning Adolf Hitler?

A. Yes. He said Mr. Hitler was very much—
The Court: Let's get the time now.

Mr. Dean: Yes.

Q. By Mr. Dean: When did this conversation take place concerning Adolf Hitler?

A. Well, I really don't remember the date or any thing.

Q. Can you give us the approximate date?

A. I would say it was along about the last—oh, in June, May or June, that is, in '41.

Q. Now, Mr. Huggins, how far removed from the first conversation which you related was it? Now, I want you to talk loud enough so I can hear you.

A. About how long a time?

Q. Was it close to the time of the first conversation?

A. Oh, it might have been two or three weeks apart.

Q. Who was present during that conversation?

A. There wasn't anyone.

Q. What time of day was it? Do you recall?

A. As I remember, this was along in the afternoon.

Q. Can you fix the—well, I think you have.

Will you tell us now what the conversation was concerning Adolf Hitler?

(Testimony of F. H. Huggins.)

A. Well, he said he thought the American people mis- [39] understood Hitler and that Hitler himself was a very nice man. That is about the sum of it.

Q. Did you have a conversation with Mr. Bergmann at any other time concerning Adolf Hitler?

A. Well, I can't just recall right now.

Q. I see.

Well, did you have any conversation with Mr. Bergmann concerning his political affiliations?

A. He was over at our apartment one day to get some writing paper.

Q. When was this?

A. I can't recall the month, but it was in the fore part of '41. My mother was there and he began to talk to her, after he was introduced, in German, and my mother said, "I can't understand that." And he said, "Maybe French?"

Mother said, "No, just plain American."

He said, "I am a Nazi. I am a Nazi."

Q. Now, did you have any conversation, Mr. Huggins, with the defendant after December 7, 1941?

A. Yes.

Q. Where did this conversation take place?

A. While I was passing by. He was standing out there by the driveway to his garages.

Q. Excuse me. But was anyone else present at the time?

A. No, sir. [40]

Q. What time of day was it?

A. In the evening.

Q. In the evening?

A. Yes.

(Testimony of F. H. Huggins.)

Q. Now, I have said, "After December 7th." Can you fix it a little closer for us? Can you fix the approximate date for us?

A. Well, it was just a few days after that, maybe a week.

Q. Tell us what the conversation was, please.

A. When I went past, he spoke to me, and we got to talking. One word led to another, and I said to him, "Now what do you think of your nice friend, Japan?"

"Well," he said, "they had to do that."

I said, "I don't see why they had to."

Q. Did he say anything else?

A. No; that was all. I went on then.

Mr. Dean: That is all the direct examination, your Honor.

The Court: What else was said? Of course, we all know what happened on December 7th, but we don't know what you and he were talking about.

The Witness: I don't remember just what the conversation was.

The Court: Were you talking about the attack of the Japanese Navy upon Pearl Harbor? [41]

The Witness: There was something said about that, and I said, "Now, what do you think of your Japanese friends?"

"Well," he said, "they had to do that."

The Court: What was he referring to? Do you know?

The Witness: I suppose he was referring to the

(Testimony of F. H. Huggins.)

attack on Pearl Harbor. That is the way I took it, anyway.

The Court: Anything else?

The Witness: No, I went on.

The Court: Did you take exception to it? Let's see; you live right near Mr. Bergmann?

The Witness: Yes, just in the next block, the next lot north.

The Court: Do you have a little——

The Witness: Court there.

The Court: Is there a group of private residences there?

The Witness: No, it is a court, an apartment house.

The Court: You saw him at his court?

The Witness: Yes, as I was coming down the street going home.

The Court: All right.

Mr. Dean: Your Honor, before cross examination, may I ask a five-minute recess?

The Court: All right; we will take a short recess.

(A short recess was taken.)

The Court: Any further questions? [42]

Mr. Dean: No further direct examination.

The Court: Cross-examine.

Cross Examination

By Mr. Jacobson:

Q. Mr. Huggins, your property is just north of Mr. Bergmann's? A. It is.

(Testimony of F. H. Huggins.)

Q. You lease a court, do you not?

A. Yes, sir.

Q. There are, I presume, children living in your court?

A. There are.

Q. And have been right along?

A. Yes.

Q. Have you and Mr. Bergmann had quite a bit of difficulty over children bothering his property?

A. No, we haven't.

Q. Hasn't he complained to you several times about children bothering him?

A. He has been over a time or two, yes.

Q. Did the Juvenile Department of the city of Long Beach come down one time in 1941 to check up on the theft of some lumber off his property?

A. Not that I know of.

Q. You don't know anything about that?

A. No, sir. [43]

Q. Now, he did offer to lease you his property but the negotiations fell through. Is that right?

A. He wanted to lease it to me.

Q. You made him a counter-offer, didn't you?

A. No, I didn't.

Q. He just proposed the lease, and nothing came of it?

A. Nothing came of it.

Q. And you and Mr. Bergmann haven't had much to do with each other, have you?

A. Well, not a great deal, no.

Q. Mr. Bergmann lives very much to himself, does he not?

A. Well, as far as I know.

(Testimony of F. H. Huggins.)

The Court: You are willing to let him, aren't you?

The Witness: Absolutely.

The Court: All right.

Q. By Mr. Jacobson: With reference to this conversation about Japan, do you remember the month in which that happened, that he said he would like to visit Japan?

A. I can't recall the month, but it was some time in '41.

Q. At that time did he say anything more than that they were nice people? Did he express any admiration for the beauty of the country?

A. Not that I remember of. [44]

Q. Was that all the conversation that day; that he said he would like to visit Japan some time?

A. No, he did most of the talking. I don't just remember now all of it.

Q. That is about all you remember at this time?

A. At that one particular time.

Q. In fact, the conversations with Mr. Bergmann were somewhat one-sided as a rule, weren't they?

A. Well, he usually talks most of the time.

Q. Referring to your mother—was that your mother who was visiting you? A. It was.

Q. He was introduced to your mother?

A. My wife introduced him to my mother.

Q. Her name is the same as yours?

A. No. She has been married a second time. Her name is Duell.

(Testimony of F. H. Huggins.)

Q. D-u-e-l-l? A. Yes, that is right.

Q. When Mr. Bergmann was introduced to your mother, he spoke to her in German? A. Yes.

Q. And she said she didn't understand it?

A. She didn't understand that.

Q. Then he said, "Perhaps you are French?"

A. That is right. [45]

Q. And she said she spoke only English or American?

A. She said she was just "plain American."

Q. When Mr. Bergmann made this statement, "I am a Nazi," was he laughing and smiling?

A. Well, he just had a kind of a smile on his face. He said, "I am a Nazi. I am a Nazi."

Q. Was anything further said?

A. Nothing that I remember of right then. I don't recall it, anyway.

Q. Do you remember why Mr. Bergmann came over that day?

A. He came over to get some writing paper. He had some narrow paper like that with him (indicating), and I had a typewriter at the time, and I had some wide paper, and he wanted to trade paper with me.

Q. He wanted to trade his paper for yours?

A. Yes.

Q. Did he succeed in making the trade?

A. I gave him the paper, yes.

Q. How long would you say Mr. Bergmann was there with you, your mother and your wife?

A. Oh, he was there about four or five minutes.

(Testimony of F. H. Huggins.)

Q. It was a very short conversation?

A. Yes, it was.

Q. Did Mr. Bergmann tell you why he wanted the paper?

A. He said something about listing something. I don't [46] remember what it was.

Q. Was there some conversation about the fact he was going to draw up a lease of his property?

A. No, no; it was for listing some of the stuff he had that he was going to send away some place. I don't remember just what it was now, but he said he had to typewrite it down, and he wanted wider paper to make the listing.

Q. Some sort of a list he was planning on making up at that time? A. Yes.

Q. But you don't know what it was now?

A. I don't remember now, no.

Q. There was a conversation after the lend-lease bill was passed? A. Yes, there was.

Q. And you and Mr. Bergmann were the only ones present? A. That is all.

Q. That was out in his front yard——

A. In his front yard.

Q. ——or on the street?

A. It was in his front yard.

Q. Can you give us more of the conversation, about how the subject of lend-lease came up?

A. No, I don't know as though I can. We were just [47] talking along. He was talking about the courts and then it went off into the administration. He didn't approve of it. He said he didn't think

(Testimony of F. H. Huggins.)

that he would have become an American citizen if he had known the Government was going to furnish England with material to fight Germany.

Q. Had he ever expressed his opinion before that as to England to you?

A. He didn't like England.

Q. He didn't like England? A. No.

Q. In fact, he was rather bitter toward England, was he not?

A. He was bitter toward England, yes.

Q. This lend-lease bill provided for material to be loaned or sold, or given to England. Is that right?

A. Well, he didn't say about that. He said he didn't like them to furnish the stuff to fight against Germany.

Q. Of course, that was prior to the United States being involved in the war?

A. Yes, it was.

The Court: Of course, at the time you didn't consider that anything out of the ordinary, did you?

The Witness: Not so much, no; not until after we got into the war.

The Court: You knew there were a lot of people, prominent people, who were opposing lend-lease, and a lot of [48] people like the Irish groups who were basing their opposition on aiding England and talking about the fight between the Irish and the English, on English imperialism? You heard some of the speeches of Senator Wheeler and his son John delivered around in Long Beach about that time, did you not?

(Testimony of F. H. Huggins.)

A. Yes.

The Court: It wasn't anything they weren't advocating, was it?

The Witness: I don't know. I didn't read their speeches.

The Court: You knew at the time there were a lot of American people who were opposing it?

The Witness: Isolationists, yes.

The Court: You knew there were a lot of them in Congress too, didn't you?

The Witness: Oh, yes.

The Court: You knew that the extension of the draft from one year only passed the House by one vote, did you not? And you remember our distinguished Senator from California, Senator Hiram Johnson, voted against it; said the Government had broken faith with the people when it promised the boys it would only keep them one year. In other words, at the time he made this observation, there were a lot of people, native-born and others, who actually felt it wasn't our fight and we had no business helping England; didn't care whether England disappeared from the face of the earth or not. You knew that, didn't you? [49]

The Witness: Oh, yes.

The Court: So his observation was just along the same lines.

Did you ever read some of the Los Angeles newspapers prior to our entry into the war?

The Witness: No; I take the Press-Telegram.

(Testimony of F. H. Huggins.)

The Court: Well, I know the Pierce brothers were not isolationists.

Now, this conversation you had with him when he said, "I am a Nazi"—by the way, does your mother-in-law have a foreign countenance?

The Witness: No.

The Court: She looks typically American?

The Witness: Yes.

The Court: The name Duell sounds rather foreign.

The Witness: He said, "It may be French?"

The Court: He said, "It may be French?"

The Witness: Yes. He thought she might be French.

The Court: It wasn't anything especially, except the man who speaks many languages wants to show up his knowledge. Isn't that right?

The Witness: No; until he said he was a Nazi.

The Court: Did you argue about what the Nazis stand for, or anything like that?

The Witness: No, we didn't.

The Court: He said, "I am a Nazi"? [50]

The Witness: Yes.

The Court: Then you dropped it and went on talking about the paper?

The Witness: No, I just gave him the paper and he went away.

The Court: This other conversation that you say was after Pearl Harbor, all he said was, "Japan had to do it." Is that it?

(Testimony of F. H. Huggins.)

The Witness: That is all. I said, "I don't see why."

The Court: What did he say?

The Witness: Well, I don't remember what he said.

The Court: You don't remember what he said?

The Witness: I just went on because I was going home then.

The Court: You were sort of twitting him about these Japanese people he was talking about. Is that the idea?

The Witness: I didn't like what Japan done, no.

The Court: Nobody else did, either. I mean you just brought it up to remind him of a conversation you had had before. Is that the idea?

The Witness: I don't remember just how that was; whether he brought it up or whether I did.

The Court: You had talked previously to him about Japan, and he said he liked the Japanese people and wanted to go on a visit there?

The Witness: Yes. [51]

The Court: You don't know how many days after December 7th that was, do you?

The Witness: No, not exactly; but it wasn't over a week or so.

The Court: It wasn't over a week or so?

The Witness: No, not over two weeks, I don't think, anyway.

The Court: All right.

Mr. Jacobson: No further questions on cross examination.

(Testimony of F. H. Huggins.)

Mr. Dean: No redirect, your Honor.

The Court: All right; step down, Mr. Huggins.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Kennedy, will you take the stand?

URIAH L. KENNEDY

called as a witness by and on behalf of the Plaintiff,
having been first duly sworn, was examined and
testified as follows:

The Clerk: Please state your name.

The Witness: Uriah L. Kennedy.

The Clerk: U-r-i-a-h?

The Witness: Yes.

Direct Examination

By Mr. Dean:

Q. Mr. Kennedy, what is your full name,
please? [52]

A. Uriah L. Kennedy.

Q. I am going to ask you to speak just as
clearly as you can so counsel for Mr. Bergmann
can hear you.

A. Yes, sir.

Q. Now, what is your address? Where do you
live?

A. I live at 4825 East Broadway, Long Beach.

Q. How long have you lived in Long Beach?

A. 22 years.

(Testimony of Uriah L. Kennedy.)

Q. Are you acquainted with the defendant, Friedrich Walter Bergmann? A. I am.

Q. How long have you known him?

A. More than 10 years; perhaps 15; it has been a long time.

Q. What is your occupation, sir?

A. I am assistant building inspector.

Q. For the city of Long Beach?

A. That is right.

Q. Directing your attention to the fall of 1941, did you have a conversation with Mr. Bergmann concerning the length of the war? A. Yes.

Q. Where did the conversation take place?

A. In the office of the Building Department.

Q. Of the City of Long Beach?

A. Of the City of Long Beach. [53]

Q. Who else was present at this conversation?

A. Mr. Vaughn, a plastering inspector for the Department.

Q. What time of day or night was it?

A. I would say perhaps 9:00 o'clock in the morning, just before the inspectors left the office.

Q. Will you tell us what the conversation was and the circumstances surrounding the beginning of the conversation?

A. Mr. Bergmann came in the office, and I think he had left some pamphlets of a speech. It was along about the time of Lindbergh's and Wheeler's speeches. He came in one morning to see if I had read it.

Q. Do you remember what the pamphlet was?

(Testimony of Uriah L. Kennedy.)

A. It was America First.

Q. Published by American First?

A. Yes.

Q. Now, continue, please.

A. So Mr. Vaughn came up to the counter where we were, and we got discussing the war.

First, Mr. Bergmann came to the counter. I met him at the counter, and Mr. Vaughn came up and began discussing the war. I asked Mr. Bergmann when he was going back to Germany. He said, "As soon as the war was over."

I said, "When will the war be over?"

He said, "Well, we don't know, but," he said, "when it comes to the worst," he said, "we—Hitler—will use gas." [54]

Q. Excuse me just a moment, Mr. Kennedy.

A. Yes.

Mr. Dean: Will you read that last statement back, Mr. Reporter? May it be read, your Honor?

The Court: Yes.

(The record was read.)

Q. By Mr. Dean: Now, with reference to that last statement, are those the exact words of Mr. Bergmann? A. That is right.

Q. You are positive of that?

The Court: What is the date of the conversation?

Mr. Dean: It was in the fall of 1941, your Honor.

Q. Can you fix the approximate date?

A. I can't fix the regular date.

(Testimony of Uriah L. Kennedy.)

Q. Let's take December 1st. That is a good starting point. How long before that?

A. Just about the time the American First Committee was having a lot of meetings against the lend-lease bill or the furnishing of aid to England.

Q. When was that?

A. When was that?

I don't know what month it was; shortly before the war.

Q. Would you say it was later than September?

A. It might have been in September or October.

Q. Now, did you have any conversation with him concern- [55] ing the length of time he would stay in Germany?

A. He said, "When I go back, I am going to stay."

Q. Do you recall anything else that was said during that conversation?

A. No, I don't think so.

Mr. Dean: That is all the direct examination, your Honor.

The Court: All right. Go ahead with cross examination.

Cross Examination

By Mr. Jacobson:

Q. Mr. Kennedy, you know Mr. Bergmann real well, don't you? A. I do.

Q. And are familiar with his activities in the district, harbor district? A. Yes.

Q. Over a period of these 15 years you have known him, Mr. Bergmann has been given to rather

(Testimony of Uriah L. Kennedy.)

extremes of, and speaks on almost any subject, does he not?

Mr. Dean: I object to that on the ground it calls for a conclusion as to what the extremes are.

The Court: That is a rather argumentative question, Mr. Jacobson.

Mr. Jacobson: I will withdraw it, your Honor.

The Court: You may put it in a different way. I think it might be material as to whether the man is given to [56] exaggeration, but I mean it should be by examples of speech rather than a general conclusion.

Q. By Mr. Jacobson: Mr. Bergmann, when he speaks, is inclined to speak very loudly, is he not?

A. Mr. Bergmann is very enthusiastic about most things.

Q. Very enthusiastic?

A. Very enthusiastic in his conversation.

Q. And in the period of 15 years that you have known him, have you helped to issue him permits to build?

A. Oh, I wouldn't say "many," but he is in the office a good many times. He is a property owner.

Q. He owns quite a bit of real estate in Long Beach?

A. I think so.

Q. And at one time your department was a part of the city engineer?

A. That is right.

Q. That has jurisdiction over parks?

A. We don't have the parks.

Q. You don't have it in your department?

A. No.

(Testimony of Uriah L. Kennedy.)

Q. Are you personally acquainted with the property on West Seaside? A. Yes, I am.

Q. Do you know anything about the improvements that Mr. Bergmann made there? [57]

A. Yes.

Q. Have you ever been down there?

A. I have.

Q. Both before and after the improvements?

A. Yes.

Q. Did you observe by what means he filled in the land and graded it? A. Yes, I did.

Q. What did you observe? How did he do it?

A. Well, he went down in what we call "Seaside Park" along the Ocean front. Of course, it was very shaggy at that time. He had some ocean front lots and I understand he floated in some large poles that looked like telephone poles from the ocean, and built sort of a wooden retaining wall around the lots and planted flowers in around them.

Q. He did this labor himself? A. Yes.

Q. You know of your own observation the man is a prodigious worker, don't you?

A. Oh, yes.

Q. Other than this remark he made in the building department in September or October, 1941, about, "We don't know when the war will end. When it comes to that we—Hitler will use gas,"—and you do recall positively he used the word "we"?

A. Yes. [58]

Q. Had there been quite a conversation about

(Testimony of Uriah L. Kennedy.)

the progress of the war in Europe before that remark was made?

A. No, the conversation was before that. We sort of got into it quickly some way.

Q. Were there many conversations about the war after it broke out in Europe sometime, I think, in '38?

A. No, he never discussed the war that I know of with me.

Q. During the 15 years you have known him do you recall any other remark of a similar nature to this made by Mr. Bergmann?

A. As regarding the war?

Q. The war or his citizenship?

The Court: His feelings towards this country.

Q. By Mr. Jacobson: Or his feelings toward the United States?

A. Oh, no, excepting his criticism of the administration.

Q. You are speaking now of the national Government? A. That is right.

Q. Mr. Bergmann was very much out of sympathy with President Roosevelt's policies?

A. I think so, yes.

Q. And he was very much in sympathy with the view expressed by Senator Wheeler, General Wood and Colonel Lindbergh and members of the America First Committee? [59]

A. That is right.

Q. Now, in the 15 years you have known him, did you ever recall Mr. Bergmann telling you that

(Testimony of Uriah L. Kennedy.)

he had been in Federal Court and had been given his citizenship?

A. I didn't know he was a citizen until just a short time before this conversation. I was surprised when he told me, when he said he had been a citizen for two years, but I didn't know it.

Q. You hadn't known it prior to that?

A. No.

Q. Most of the relationship then you have had with Mr. Bergmann has been in connection with real property he has owned and improvements he has made? A. That is right.

Q. And you do know that he has done a great deal toward the improvement of that district in Long Beach, do you not?

A. I would say that he has.

Q. Did Mr. Bergmann ever make any statement to you of any intentions on his part with reference to his property and giving it to the City of Long Beach for public purposes? A. No.

Q. Pardon? A. No.

Q. He never did? A. No. [60]

Mr. Jacobson: I think that is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right; step down, sir. You may be excused, Mr. Kennedy.

(Witness excused.)

Mr. Dean: Mr. Kelgard, will you take the stand, please.

ANKER L. KELGARD,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, testified as follows:

The Clerk: Your name?

A. Anker L. Kelgard.

Direct Examination

By Mr. Dean:

Q. Will you tell us what your full name is, please? A. Anker L. Kelgard.

Q. Where do you live, Mr. Kelgard?

A. Long Beach, California.

Q. How long have you lived there?

A. 41 years.

Q. Do you know the defendant Friedrich Walter Bergmann? A. I do.

Q. How long have you known Mr. Bergmann?

A. I have known Mr. Bergmann for possibly 15 years.

Q. In a business way? A. Yes. [61]

Q. Now, directing your attention to the latter part of 1939 did you have a conversation with Mr. Bergmann on or about that time concerning the war? A. I did.

Q. Where did the conversation take place?

A. Up in the City Hall in Long Beach.

Q. Who else was present, if anybody?

A. Nobody was present but he and I.

Q. Can you fix that date a little better for us?

A. It is pretty hard to fix the time. As I recall it, it was just before the fall of France.

(Testimony of Anker L. Kelgard.)

Q. Just before the fall of France?

A. That is right.

Q. At that time did you have a conversation with Mr. Bergmann concerning his return to Germany?

A. Yes. He said that he felt like going back to Germany and helping whip England.

Q. Was that the substance of the conversation concerning his return to Germany? A. Yes.

Mr. Dean: That is all the direct examination.

The Court: The fall of France was in the fall of 1940, wasn't it?

The Witness: I believe it was.

The Court: That was right after——

The Witness: This conversation took place, as I recall [62] it, right after that.

The Court: All right.

Cross Examination

By Mr. Howser:

Q. Mr. Kelgard, you say you have known Mr. Bergmann for 15 years?

A. Approximately 15 years more or less.

Q. And this is the only comment that you recall in that 15-year period of time?

A. Well, it is the only comment that I would say would reflect upon himself as a citizen of the country.

The Court: It is in the light of events that have happened since. Isn't that it? You didn't think anything out of the ordinary, a statement of that

(Testimony of Anker L. Kelgard.)

character? There are a lot of people who hate England in this country, aren't there, good American citizens? A. Yes.

The Court: Have you ever listened to addresses before the Ancient Order of Hibernians.

The Witness: No, sir, I haven't.

The Court: Your name is Danish, isn't it?

The Witness: Yes, sir. You are a good guesser.

The Court: Of course, you haven't any love for Germany yourself, have you?

A. Not now, no, sir.

The Court: I see; but before the war, before the [63] United States went to war you knew among your neighbors a lot of people, native born citizens, who took sides one way or the other?

The Witness: Oh, certainly.

The Court: As a matter of fact, Long Beach was a rather hot bed for America First?

The Witness: A lot of them belonged.

The Court: Some of the biggest meetings were held there. John Wheeler presided at one of the biggest meetings there.

The Witness: Yes.

The Court: You remember there was a meeting there where somebody got up and made a speech the other way and John Wheeler came out? John Wheeler at that time was an attorney for one of the Government departments. I think he lost the job after that. John Wheeler was the President's—the would-be President Burton Wheeler's son,

(Testimony of Anker L. Kelgard.)

and Long Beach, despite its growth is still a very neighborly sort of city.

The Witness: Yes.

The Court: It is given over to a lot of talking like in the days of the old horse shoe club?

The Witness: That is right.

The Court: Even public officials stop to visit with the people. They begin to talk about the weather and about what the Mayor is doing, whether to recall this Mayor, as they have recalled a lot of others, and so on. So they are a talkative kind of people in Long Beach, aren't they? [64]

The Witness: Yes.

The Court: And his observation didn't impress you as being any different than what you had heard from the Auditorium speeches by Wheeler, Lindbergh and others, were they?

The Witness: No, I can't say that it was at that time.

The Court: So it is only in the light of later events that it kind of impressed you as showing a rather strong bias the other way?

The Witness: Yes.

I did say this to him during the conversation: I said, "You are a citizen of this country. You have made a lot of money here. You and I were both in the last war and we know what it is all about." I said, "What do you want to go back and get mixed up in that mess for? Why don't you get married and settle down here?"

The Court: That is good advice.

(Testimony of Anker L. Kelgard.)

I see; all right.

You didn't have any conversation with him since December 7th?

The Witness: No, sir.

The Court: I see; all right. Step down.

Mr. Howser: That is all.

The Witness: May I be excused, please?

The Court: Yes. All of you gentlemen, all the witnesses, unless you are retained by request of the Government, will be excused to go about your business. [65]

The Court: Call your next witness.

Mr. Dean: Mrs. Thiessen, will you take the stand, please?

EMMA V. THIESSEN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Emma V. Thiessen, T-h-i-e-s-s-e-n.

Direct Examination

By Mr. Dean:

Q. Mrs. Thiessen, is that the way you pronounce it? A. Yes.

Q. Where do you live? A. Long Beach.

Q. How long have you lived there?

A. Oh, about 28 years.

Q. What is your occupation? A. Realtor.

(Testimony of Emma V. Thiessen.)

Q. Do you know the defendant, Friedrich Walter Bergmann?

A. No. I just met him on one occasion.

Q. When was that occasion?

A. It was in August of '39. I went to look at his property.

Q. What was the reason you went to look at the property?

A. Well, someone told me he wasn't very patriotic [66] and I wanted a court for a friend of mine who wanted to buy one, and I went down to pump him.

Q. You say this was in August of 1939?

A. Yes, in August of '39.

Q. Did you have a conversation with him at that time?

A. Quite a lengthy one. At 2:00 o'clock in the afternoon I met him by appointment.

Q. Who else was present, if any one?

A. My husband.

Q. Will you tell us what the conversation was, Mrs. Thiessen?

A. He said he came over here after the World War was over. He came to Alaska, and he said he had \$26 American money when he landed and that he had made a fortune here.

He said he wanted to go back, that he had fought three years in the German Army and he wanted to go back and fight three years more.

Then I asked him—I said, "Mr. Bergmann, if

(Testimony of Emma V. Thiessen.)

you go back there, are you coming back to the United States?"

He said, "No, I am an archeologist, and I am going on to Egypt (I think he said) and look for lost missions."

Q. Did you have any other conversation with him?

A. Yes, about the furniture. I asked him why he didn't rent the court. The moths ate all the velour and the overstuffed furniture and the rooms were so run down and I asked him why he didn't rent them and he said he didn't want any- [67] body living around him.

The Court: That sounded kind of queer from a realtor?

The Witness: It certainly did. I didn't know moths could multiply like that.

The Court: I see.

By Mr. Dean:

Q. Did you have any other conversation, Mrs. Thiessen, concerning it?

A. No; that is just about all. That is all I wanted to say to him.

Mr. Dean: I think that is all the direct examination.

Cross Examination

By Mr. Howser:

Q. Mrs. Thiessen, when you went down to see Mr. Bergmann, you had already been advised by some one that he was going to leave?

(Testimony of Emma V. Thiessen.)

A. They just said they didn't think he was a patriotic citizen.

Q. You went down there looking for a person who, in your mind, was odd?

A. I wanted to see his court. I had a buyer for one just like that, yes.

Q. But you did expect to see an individual who was odd in appearance?

A. Well, he had on just shorts and a pair of tennis shoes. I had an appointment with him and I met him, and [68] thought it was very strange for a man to look like that when he had an appointment.

The Court: You haven't been around Palm Springs?

The Witness: No, I never have.

The Court: You thought he should have at least put on a shirt?

The Witness: I have been in this country 59 years and I never met a man like that before.

By Mr. Howser:

Q. You found the man living down there in apparently good health, did you not?

A. I didn't look at him. He was so near nude that I didn't look him over very good. He is quite a nice looking fellow but I didn't like his sentiments.

Q. But you saw a man living alone there?

A. I didn't know who he was living with. He didn't let me see his apartment at all.

Q. Then you——

(Testimony of Emma V. Thiessen.)

A. I saw all the apartments except his.

Q. Then you cannot describe for us the manner or the extent of the furnishings and the way he was living?

A. Not in the apartment he was in, but the others were sure eaten up with moths.

Q. Now, these other apartments, did you go through all of them? A. I did. [69]

Q. Were they all in the same condition?

A. Yes, in a deplorable condition.

Q. Nobody was living in them?

A. No, they were all empty.

Q. And the furniture was covered up, was it?

A. No, it was not covered up. There weren't any covers when I saw it at all. All the velour was eaten off the overstuffed furniture and the carpets looked bad. I didn't think a man looking as smart as he did would let the place get empty. I asked him why and he said he didn't want anybody living around him.

Q. Now, on this——

A. Of course, that was his privilege.

Q. Yes.

This particular vicinity down there, without any reflection on those people, is generally recognized as the lower rental district?

A. Oh, he has a very nice court and it was furnished and it had been originally furnished nicely.

Q. But the district as a whole is a low rental district?

(Testimony of Emma V. Thiessen.)

A. There are some very nice buildings on the west side there. There are some very poor ones, too.

Q. In other words, the 8 and 12 dollar a month property is down there?

A. He has a very nice stucco bungalow. [70]

Q. In other words, Mr. Bergmann has taken a great deal of pride and kept his property up?

A. His yard was nice and clean, yes.

Q. And he has beautiful shrubs and flowers planted around his place?

A. The yard was very neat.

Q. He has the only trees in the whole district around his property, hasn't he?

A. No, I wouldn't say that, but his yard is very neat.

Q. Now, are you a member of any organization or society that sponsors and inspires patriotism?

A. Sponsors what?

Q. Sponsors patriotism?

A. Why, I consider myself a very good American.

The Court: No, no. He wants to know if you are a member of some special organization.

The Witness: No, I am too old. I had sons in the last war and I have two sons now.

The Court: Do you belong to the Auxiliary of the American Legion?

The Witness: No, because I have too much work to do.

(Testimony of Emma V. Thiessen.)

Q. By Mr. Howser: This particular district down there, and immediately adjacent to the property that you observed, is surrounded by oil wells?

A. Yes.

Q. And tanks? [71] A. Yes.

Q. And large concrete structures around the tanks?

A. There are some, but they are according to the city specifications. They have to be that way. You have to have a certain amount of concrete on account of people living in the district.

Q. The Long Beach lumber yards are there, are they not?

A. Oh, the Navy Ball Park was just across the street from him at that time.

Q. And the fish canneries were down there?

A. No, they are way over in Wilmington on the other side.

Q. Oh, the boats come in there and unload, do they not? A. Nothing undesirable, no.

The Court: You can't knock any part of the town to her.

The Witness: No, you can't knock any part of the town to me. I voted for you, so don't you tell me about that.

Q. By Mr. Howser: You learned when you went down there that Mr. Bergmann professed to be an archeologist of some note?

A. Yes, and after he got through in the war—he fought 3 years in the last war and he wanted

(Testimony of Emma V. Thiessen.)

to go over and fight three years more—he was an archeologist. When I asked him whether he was coming back to the United States he said [72] no, he was going to Egypt to look for lost missions.

Q. Mrs. Thiessen, outside of his own declarations that he served in World War I, you have no knowledge on that subject?

A. I never saw him before or since until today.

Q. Whether or not he served in that war you do not know?

A. I took his word for it.

Q. I mean other than his own statement?

A. No.

Q. You have no proof of that?

A. No, I haven't.

Mr. Howser: That is all, your Honor.

Mr. Dean: May I ask one question on redirect, your Honor?

The Court: Yes.

Redirect Examination

By Mr. Dean:

Q. At this time, the time you saw Mr. Bergmann, Mrs. Thiessen, was there quite a demand for property of the sort you visited?

A. Yes, a big demand, and we didn't have any rentals at all. That is why I asked him why he didn't rent his apartment.

Q. Do you know what the cause of that demand was?

A. People coming in for the factories, the work in all [73] the different industries.

(Testimony of Emma V. Thiessen.)

Mr. Dean: That is all.

The Court: I don't think that is material. The man has a right to do as he pleases with his own property.

The Witness: I just couldn't understand the moths eating it up.

The Court: Well, of course, like all thrifty women it is impossible for you to see why property should go to waste.

The Witness: They could have rented it for \$35 a month. I am too much of a Jew for that.

The Court: All right.

Mr. Dean: That is all I have.

The Court: Step down.

(Witness excused.)

Mr. Dean: Mr. Posey, will you take the stand?

ALEC R. POSEY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Alec R. Posey.

Direct Examination

Mr. Dean: The witness is a little hard of hearing. May I approach him, your Honor?

The Court: Yes.

(Testimony of Alec R. Posey.)

Q. By Mr. Dean: Mr. Posey, when you answer my ques- [74] tions I want you to face in this general direction, if you will. You don't have to face me. Just talk as clearly as you can.

A. All right.

Q. Your name is Alec R. Posey. Is that correct? A. Yes.

Q. Where do you live, Mr. Posey?

A. Long Beach.

Q. How long have you lived there?

A. 32 years.

Q. What is your business or occupation?

A. Why, nothing in particular right now.

Q. Are you retired? A. Yes.

Q. Do you know the defendant, Friedrich Walter Bergmann? A. Yes, sir.

Q. How long have you known him?

A. Between two and three years.

Q. Now, when was the first time you saw him if you recall?

A. Well, it happened that he was the purchaser of a piece of property that I had lived in for a number of years. I think it was about three years ago, something like that. I don't know.

Q. Have you ever had any conversations with Mr. Berg- [75] mann concerning Adolph Hitler, Mr. Posey?

A. From time to time, yes.

Q. Where did those conversations usually take place?

A. Oh, around the property there.

(Testimony of Alec R. Posey.)

Q. When you speak of "the property," do you mean Mr. Bergmann's property?

A. Mr. Bergmann purchased the property later on.

Q. Now, when did those conversations first begin to occur?

A. Well, after he purchased the property, he was making repairs on the property from time to time. He was there very nearly every day for two or three months, perhaps.

Q. Can you tell us when he purchased the property?

A. No, I can't give you the exact date.

Q. I see; can you tell us the year?

A. Well, about three years ago.

Q. About three years ago? A. Yes.

Q. What were these conversations you had with Mr. Bergmann concerning Adolph Hitler? By the way, was any one else present at the time you had these talks?

A. I can't recall whether there were people present or not—it has been some time ago—but my conversation with him in regard to Hitler was this: I was told by him that Hitler was O. K.

The Court: Let's find out the date first. [76]

Mr. Dean: All right.

Q. Mr. Posey, you are about to tell us a statement, I take it, that Mr. Bergmann made to you.

A. Yes, sir.

Q. Can you tell us to the best of your ability when that statement was made?

(Testimony of Alec R. Posey.)

A. Well, it wasn't long after he had started to work around the place that he started to talk to me that way; maybe 2 or 3 weeks after he purchased the property.

Q. Well, now, can't you fix the time of the purchase of the property? As best you can fix it, approximately when was it? You say about 3 years ago. What time of year was it? Do you recall that?

A. Let me see. Well, now, I will have to figure on the lease that he gave to the present lease. That expires the first of July, and that was given for a term of three years, so I judge that it was about that time or a little previous to that time that he commenced having little talks with me.

Q. About July, 1940? A. Well——

Q. Is that right?

A. Yes. Let's see; that would be 1940.

Q. All right.

Now, will you tell us what the conversation was? What he said, if you can remember? [77]

A. Well, relative to Hitler, I was informed by the defendant that Hitler was all right, O. K.

Q. Was that all that was said about Hitler?

A. Well, he said, "He is more capable of running the Government" than the way our Government was functioning at that time.

Q. Did you have any conversation with him concerning his giving anything to Hitler?

A. Well, he made the remark that if Hitler needed it, he could have everything that he had.

Q. Was that statement made at about the time

(Testimony of Alec R. Posey.)

you fixed here; approximately 3 years prior to 1943?

A. Those conversations were spread along for about three months from time to time because I saw him almost every day.

Q. I see.

Now, did you have any conversation with Mr. Bergmann concerning Hitler coming to the United States?

A. Well, he made the remark.

Mr. Jacobson: May we have a yes or no answer and then the time fixed, your Honor?

The Court: Yes. So long as this is a series of conversations, we ought to have some date fixed.

Q. By Mr. Dean: I take it that you are about to give a statement, Mr. Posey, that Mr. Bergmann made.

First of all, let me ask you this: Did the statement [78] occur during the 3-month period you have been referring to? A. Yes.

Q. Do you recall whether or not any one else was present? A. I couldn't say.

Q. Will you tell us whether or not you had any conversation with him concerning Hitler coming to the United States?

A. Oh, yes. He said if Hitler came over here he would show us how to run the Government.

Q. Did you have any conversation with Mr. Bergmann about his return to Germany?

A. Well,—

Q. Excuse me. Will you answer that yes or no, Mr. Posey? A. Sir?

(Testimony of Alec R. Posey.)

Q. Did you have such a conversation?

A. Yes.

Q. Now, did it occur during the same three months period that you have been relating? A. Yes.

Q. You can't fix for us, I take it, what part of the three months period it occurred in? A. No.

Q. Will you tell us what the conversation was?

A. About returning to Germany. [79]

Q. Yes.

A. He said after the trouble was over he would get rid of what he had here and go back to the old country and live like a white man.

Q. Are you positive that that last statement "live like a white man" was made?

A. I believe that is just about what it was.

Q. Now, did you have any conversation, Mr. Posey, concerning the relative efficiency of the German and American peoples with Mr. Bergmann? If you did, I wish you would answer it "Yes," or if you didn't, "No."

A. Well, it was some time ago. I couldn't say—I don't believe I could recall any special talk.

Q. I see; very well.

A. I mean relative to that.

Q. Have you ever had a conversation with Mr. Bergmann in which he described himself in any way?

A. Well——

Q. Did you have such a conversation?

A. Yes.

Q. Did that occur during this three months period you have been testifying to?

(Testimony of Alec R. Posey.)

A. Uh-huh.

Q. What did he say?

A. He gave himself the description of "Hitler, Junior."

Q. Did he use any other description? [80]

A. Well, I believe he mixed that up with "Hitler No. 2."

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: I think, gentlemen, we will take our noon recess at this time. It is the noon hour and I have certain engagements I have to keep. I presume the cross examination of this witness will take some time so we will take our regular recess and you come back at 2:00 o'clock, Mr. Posey.

The Witness: All right.

The Court: All witnesses who have not been excused will return at 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon a recess was taken until 2:00 o'clock P.M. of the same day.) [81]

Los Angeles, California,
Tuesday, November 17, 1942.
2 P.M.

The Court: All right; proceed. Call your next witness.

Mr. Dean: Mr. Posey is about to be cross examined.

The Court: Yes, that is right. Resume the stand, Mr. Posey.

ALEC R. POSEY,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination

Q. By Mr. Jacobson: Mr. Posey, can you hear what I say? A. Yes, sir.

Q. As I understand your testimony before the noon recess, you had some four conversations with Mr. Bergmann.

A. What kind of conversations?

Q. Four. There were 4 conversations that you remembered? A. Well——

Q. The first one about——

The Court: There is no use to summarize because he probably wouldn't remember them. Just start in with the first one without giving the number.

Q. By Mr. Jacobson: After you had these conversations with Mr. Bergmann what was your feeling toward Mr. Bergmann? [82]

A. Well, sir, it was sort of a mixed feeling that would be pretty hard to explain; but under the circumstances and conditions that exist it would be pretty hard to put too much blame on the defendant for the simple fact that he said he fought shoulder to shoulder with this man in the Austrian Army during World War I. The only way we have of judging one another is to judge by ourselves. If I had been in his place and did what he did, it would be hard for me to get rid of the feelings

(Testimony of Alec R. Posey.)

that I had towards him when I was in the army with him fighting.

Q. Had he said that he had fought in the Austrian Army with Mr. Hitler?

A. He said he fought in the army with Mr. Hitler, the same army that Mr. Hitler was in.

Q. That is the Austro-German Army in the first World War?

A. That is the way I understood it.

Q. Did Mr. Bergmann ever tell you about his other brothers? A. No, sir.

Q. You don't recall him telling about Kurt having been killed in France? A. No, sir.

Q. Or about Edmund having been in the artillery or some such thing? A. No, sir. [83]

Q. Is your feeling toward Mr. Bergmann today friendly? A. How is that?

Q. Is your feeling today friendly toward Mr. Bergmann? A. In a way, yes.

Q. Now, when you had this conversation about Mr. Bergmann saying in substance, "Hitler is more capable of running the Government than the way it is now run"—do you remember saying that this morning? A. I do.

Q. Had there been a discussion about the policies of the administration of President Roosevelt?

A. No, sir.

Q. There had been no discussion about the New Deal? A. No, sir.

Q. Did that remark end the conversation or did you keep on talking?

(Testimony of Alec R. Posey.)

A. Well, I didn't do much of the talking. I was listening.

Q. Is that true?

A. There wasn't any controversy with me. I was just astounded; that is all.

Q. In most of your conversations with Mr. Bergmann did he do most of the talking?

A. He certainly did.

Q. Now, Mr. Bergmann is supposed to have said, "If [84] Hitler would come over here he would show us how to run the Government." Do you recall that statement? A. I do.

Q. What was the background of that statement, if any?

A. I couldn't tell you now. I don't recollect.

Q. That wasn't—

A. But he was full of that kind of talk and he just talked it all the time and talked about the same thing all the time.

Q. That is during this two or three months?

A. Yes, sir.

Q. In 1940 or late '39?

A. I don't recall just the exact date.

Q. Well, there is a lease expiring next July which you said was a 3-year lease.

A. Yes. This was during the time the lease was being signed.

Q. So it was in the spring probably of 1940?

A. Somewhere in 1940.

Q. In speaking of his desire to return to Germany some day—do you recall that? A. Yes.

(Testimony of Alec R. Posey.)

Q. Did Mr. Bergmann ever mention to you that he had a mother there? A. No, sir.

Q. You never knew that? [85] A. No.

Q. Did he say anything about wanting to visit any other countries? A. No, sir.

Q. Did he say anything about what he would do with his property while he was gone?

A. He would get rid of it and take it along with him in his pocket.

Q. He was going to sell it before he left?

A. Yes.

Q. Did he say that? A. To that effect, yes.

Q. Just what did he say?

A. Not word for word. It would be pretty hard to recollect that—it has been so long ago—but in substance it was just that, that he would sell out and take what he had with him over there.

Q. And never come back?

A. He didn't say anything about never coming back, but he said he would go over there.

Q. Did he say when he planned on doing that?

A. Well, he didn't name any time, but he supposed at that time that there would be a day when he could go back under Hitlerism and that would be the time he would go.

Q. That is when the war was over?

A. Yes, sir. That is the way I took it. [86]

Q. But do you recall what he said?

A. Not verbatim.

Q. What is your best recollection of the words he used?

(Testimony of Alec R. Posey.)

A. Well, he wanted to do it—he said when the trouble was over he would go back to the old country—that is Germany, I suppose—and live a different life, the life of a white man, something to that effect.

Q. Go back there and live like a white man. Is that right?

A. Yes, live right. He called it “right.”

Q. Live in the right way, you mean?

A. That is the way I suppose he meant.

Q. Now, did you and Mr. Bergmann have any arguments or quarrels about the advisability of the United States lending or leasing goods and supplies to England? A. No, sir.

Q. Did you and Mr. Bergmann have any arguments or discussions about any political views of the administration? A. None in particular.

Q. Now, was it 2 or 3 months there that you used to see him quite a bit? A. Yes, sir.

Q. You had seen him almost every day in that 2 or 3 months period? A. Almost every day.

[87]

Q. Did you talk about subjects other than Germany and Hitler?

A. No. Outside of that, we did very little talking, except the work that he had on hand. We talked about that from time to time.

Q. That is the work he was doing?

A. The improvements he was making.

Q. He did all the work himself, did he not?

A. I helped him a little bit.

(Testimony of Alec R. Posey.)

Q. You helped him some? A. Yes.

Q. Just voluntarily helping him?

A. Yes. It didn't cost him a cent.

Q. You hadn't lived there, had you, when he filled in that property? A. How is that?

Q. Had you lived in that neighborhood on Seaside when he filled in that property he bought?

A. Well——(pause)

Q. On West Seaside near Santa Clara?

A. I don't know when he bought that, but I have been living on this property that he owns now on Cedar about seven years.

Q. What address on Cedar? A. 248.

Q. 248 Cedar in Long Beach? [88] A. Yes.

Q. You are a tenant and—what is it; an apartment house? A. A rooming house.

Q. It is a rooming house? A. Yes.

Q. Not managed, however, by Mr. Bergmann, is it? A. No, leased.

Q. Do you know the name of the landlady?

A. Yes.

Q. Who is the landlady?

A. Mrs. S. J. Denning.

Q. How long have you been there? A. Sir?

Q. How long have you been there?

A. About seven years.

Q. How long since you have had any conversation with Mr. Bergmann at all?

A. Oh, it has been quite a while. I couldn't say.

Q. Do you suppose it is as much as two years?

A. About. He came by there to deliver some

(Testimony of Alec R. Posey.)

lumber about—well, maybe 6 months ago, but we didn't have any conversation that amounted to anything.

Q. He just put the lumber on the lot and went his way?
A. Yes.

Q. He delivered the lumber himself? [89]

A. Well, he had another party with him.

Mr. Jacobson: That is all, Mr. Posey.

Mr. Dean: No redirect examination.

The Court: All right, Mr. Posey; you may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Beck, will you take the stand?

ALEXANDER BECK,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Alexander Beck.

Direct Examination

By Mr. Dean:

Q. Mr. Beck, what is your occupation?

A. Insurance agent.

Q. How long have you been so employed?

A. Nearly 50 years; 30 years by this company.

Q. You live in Long Beach, do you, Mr. Beck?

A. 30 years.

(Testimony of Alexander Beck.)

Q. With what company are you affiliated?

A. Travellers.

Q. You say you have lived in Long Beach 30 years. Is that correct?

A. Yes, sir.

Q. Do you know the defendant Friedrich Walter Bergmann? [90]

A. Yes, sir.

Q. When did you first meet Mr. Bergmann?

A. I may have met him a little sooner than I am going to state, but I think—I was a member of the City Council of Long Beach from 1921 to 1927, and I think I first knew him in a measure about 1922 when, I think, he was one of the principals that came before the City Council for some improvement done on property he owned on West Seaside—

Q. I see.

A. —and which he was continuously improving. I think he wanted to have the others join with him in those improvements in improving their own property. He did a lot of work on his own property.

Q. I see.

Did you ever have a conversation with Mr. Bergmann concerning his American citizenship, Mr. Beck?

A. Well, he brought that up—well, yes.

Q. Just a moment.

A. Yes, sir.

Q. Let me ask you a few preliminary questions first.

A. Yes, sir.

Q. When did the conversation take place?

A. This may not be the one you refer to, but the first conversation, I think, he told me at one time maybe in 1936 or '37—I am not quite sure, that he

(Testimony of Alexander Beck.)

had become an American citizen, had taken out his papers. [91]

Q. Did he subsequently refer to his American citizenship in any other conversation at a later date? A. Yes.

Q. When was this, Mr. Beck?

A. In March, 1941.

Q. Will you tell us the occasion for the conversation? Where did it take place?

A. It took place at his property on West Seaside.

Q. What was the occasion for your visiting his property there on West Seaside?

A. Years ago when Mr. Bergmann came here, I think—I am quite sure—he availed himself of the facilities of the Y.M.C.A. We run a little campaign, as we do yearly, and at this time it was the fourth time we had called upon him. I with others had called upon him for a subscription to the "Y". On this particular occasion—it was March of 1941—I took with me Mr. M. H. Neilson, a merchant and secretary of the Board of the Y. M. C. A., J. C. Hoffman, a member of the Y.M.C.A., a realtor, and Clyde Gates, also a member of the Y.M.C.A.

Well, we had gone down there before, one or two of us, and didn't get anywhere. So, think I, we will take four and see if we can't get a subscription.

Well, just as soon as we got there, there wasn't a chance for any one but Mr. Bergmann to get

(Testimony of Alexander Beck.)

in a word. He does the talking as has already been testified. [92]

Q. Will you tell us what the conversation was and the occasion for which you and the other gentlemen visited him?

A. Well, the occasion was to try to get a subscription for the Y.M.C.A.

He commenced a tirade against the Government, in essence, that the Government was not neutral at all, very unfriendly, had given aid to England, which he seemed to hate, and the like, and was most ashamed of his American citizenship and felt like having it canceled or suspended himself.

Q. Did he make that statement to you?

A. In the presence of these other three men as indicated in my previous statement, yes.

Q. Did you have any further conversation with him concerning the actions of the German Government in the conduct of the war?

A. Well, in essence it was this: It may not be the very language, but, "It was no more harmful for Germany to do what she was doing and killing innocent children than it was for the Treaty of Versailles which provided for the starvation of the German people." That is the essence of it.

Q. Is that just about the sum and substance of the conversation?

A. That is, sir. I haven't spoken to him since because I haven't seen him. [93]

The Court: How did this conversation about international affairs come up on a trip, the object

(Testimony of Alexander Beck.)

of which was to secure a subscription to the Y.M.C.A.? What has that got to do with the conduct of the war in Europe?

The Witness: Nothing at all in my opinion, but Mr. Bergmann, whenever you talk to him, if you have ever had a chance to get a word in, you are somebody. He does the talking.

The Court: How did he start to talk on that subject? Why was he saying that to you? You were asking him for a subscription to the Y.M.C.A., weren't you?

The Witness: This is an American institution in a way——

The Court: I know that.

The Witness: ——and here the Government was doing all this. He wanted to get out of giving us a subscription. He wanted to talk about this other affair.

The Court: Oh, I see.

The Witness: That is the essence of it.

Mr. Dean: That is all the direct examination, your Honor.

The Court: All right.

Cross Examination

Q. By Mr. Howser: Now, Mr. *Bergmann*, you say you have been engaged in the insurance business in Long Beach for approximately 30 years?

A. Not in Long Beach. 28 years in Long Beach, yes, [94] sir.

Q. And over the past years that you have been

(Testimony of Alexander Beck.)

acquainted with Mr. Bergmann, you have endeavored to sell him insurance, have you not?

A. Somewhat, partly at his own solicitation. He asked about it and I submitted to him a formula but never did any business with him.

Q. You never did any business with him?

A. He came to me about some compensation insurance on a building, on property he bought on East 7th Street.

Q. To your knowledge he has owned various pieces of property in Long Beach?

A. The only three pieces of property that I know he has owned is the one on West Seaside on which he has done a lot of work to improve it to the credit of the city and to the credit of himself. He is a hard worker. Then the property on West 7th Street he sold and made a profit on the deal, and then the property that this gentleman who just testified before me lived on on Cedar.

Q. I see.

A. All of his properties have been improved and he has tried to put them in good condition.

Q. You have no knowledge of a piece of property he owns near our Civic Center, near our Veterans Building in Long Beach?

A. Yes. That is the property on Cedar. [95]

Q. Have you ever had any conversation with him respecting his donating that property to our City of Long Beach? A. No.

Q. Now, you say when you were a City Councilman he did appear before you requesting that

(Testimony of Alexander Beck.)

the Councilmen do something to get the other people of the neighborhood to improve their property?

A. As you have indicated by former questions to others, the West Seaside district wasn't a very desirable location. 15 or 20 years ago when I was a member of the City Council there were a lot of buildings that should have been condemned. Now, he improved his property.

Q. By that you mean what, Mr. Beck?

A. He put bulkheads around, hauled in dirt, planted trees, planted flowers and improved that property he had and he wanted others to do that. His property in a measure was a show place down on West Seaside.

Q. And Mr. Bergmann to your knowledge also planted other shrubs and trees along the parkways of property he didn't own; isn't that true?

A. I don't know that, but the City owns the parkway. Yes, he planted them.

Q. In other words, he planted trees down there on the City's property to beautify the district?

A. Yes. [96]

Q. He came to you and the other Councilmen and wanted the City to help build the area up a little; isn't that true?

A. I am inclined to believe that was his thought, yes.

Q. Now, you say that you had occasion to converse with him during the year 1936 or '37 when he had become a citizen?

(Testimony of Alexander Beck.)

A. Yes. I will qualify that. I think he told me he had become a citizen.

Q. An American citizen?

A. Yes, sir.

Q. Where did that conversation take place?

A. Occasionally I would meet him on the street when he would be going up to the Ocean Center Building or the Jergins Trust Building.

Q. What did you observe about his conduct and attitude at that time?

A. I didn't think anything about it. I thought that was a natural thing to do. I myself am a naturalized citizen having been born in Denmark.

Q. At that time he told you that he had qualified as an American citizen?

A. Yes, I am quite sure it was about that date. I may be mistaken as to the year. And then, if you will permit me, I think I had occasion one time when we had an election in which I was interested, not as a candidate but the [97] candidacy of others, to ask him if he voted; and I think he told me he didn't vote, that there was something the matter with the Government, or something like that, he didn't particularly care for and didn't vote.

Q. You don't recall just what particular reason he had?

A. No. It wasn't against the national Government, but I consider any man who doesn't vote isn't a good citizen.

Q. But we unfortunately have many who do not vote, do we not?

(Testimony of Alexander Beck.)

A. That is right; too many.

Q. Who nevertheless are good citizens?

A. Yes.

Q. Now, you and four other men went——

A. Three.

Q. Three men? A. Yes.

Q. ——went down to impress upon Mr. Bergmann that he should make a contribution to the Y.M.C.A.?

A. That is the thought we had in mind, yes.

Q. And you had been down there on a previous date yourself, had you not?

A. Not at this time. In 1936 I had a Reverend Babbitt with me; in 1937 I took, I think, Mr. Gosilman of the Y.M.C.A., and the secretary of the Y.M.C.A. Then when he was fixing this house in 1940 I took Mr. Don Condit and went to [98] see him, and then Don Condit went alone to see him afterwards. That was in 1940 when he had this property that the gentleman speaks about on Cedar Avenue.

Q. Mr. Beck, you say when Mr. Bergmann first came to Long Beach that he lived in the Y.M.C.A.?

A. That was my understanding, yes.

Q. And they had befriended him?

A. Well, in a sense of the word, yes. You know, a fellow doesn't go to the Y.M.C.A. unless he likes to. Mr. Bergmann was a clean man. He didn't smoke, didn't drink and the like, and I kind of think he liked the environment there. I don't remember seeing him there. He may have been.

(Testimony of Alexander Beck.)

Q. You believed because of the fact he had made the "Y" his home that he would be a likely prospect to contribute something?

A. I would think so, if a man has plenty of money at that time.

Q. You knew when you went to see him in '41 that oil had been struck on his property and he was financially able?

A. Yes. He told me two years before that that oil had been struck on his property.

Q. And this conversation, I will ask you if it isn't a fact, Mr. Beck, that he told you that he believed from the large amount of taxes that he was paying, that certain portions of those taxes were going into certain things and that [99] was one of the reasons why he was not contributing to the "Y"? A. No.

Q. Did he tell you that he from time to time believed in personal charity; that he would give directly to people as they came to him?

A. He may have said that.

Q. Do you recall any conversation with Mr. Bergmann wherein he stated that, upon his death, he was going to leave certain property of his to the "Y" in Long Beach?

A. I don't recall just the occasion, but I am quite certain he did make that statement.

Q. And he was not only going to leave part of his property to the "Y" of Long Beach, but also to the "Y" of Toronto, Canada?

(Testimony of Alexander Beck.)

A. I don't remember him saying anything about Canada.

Q. You recall he was also going to leave part of his property to the Salvation Army?

A. Yes, I think he mentioned that, too.

Q. Do you recall, Mr. Beck, of Mr. Bergmann stating that he was also going to leave part of his property to the City of Long Beach—

A. No.

Q. —for park purposes? A. No.

Q. Or for museum purposes? [100]

A. No. He stated that he had at both Smithsonian Institute and here in Los Angeles and would like to leave something if there was a place in Long Beach to house it. If I remember rightly, we haven't any place to house those things. I think he did state if there was a place like that in Long Beach, a room owned by the City, he would like to have those things left for the City of Long Beach, those archeological specimens.

Q. And the people of Long Beach?

A. Yes; that he did say.

Q. Now, during this conversation when you say he stated that he would destroy or cancel his citizenship papers, do you recall in that conversation a reference about a discussion of this country joining up with England in a common union for the people?

A. No, he didn't like England.

Q. Pardon me?

A. He didn't like England.

(Testimony of Alexander Beck.)

Q. I appreciate that, but do you recall any conversation about Great Britain and this country joining in a common union? A. No, I don't.

Q. Do you recall any discussion about the social classes of people? A. No.

Q. Or militarism? [101] A. No.

Q. Or aristocracy?

A. No. If he did, he did the talking, because I never got a chance to say much.

Q. Here is what I am trying to get at, Mr. Beck: Do you recall Mr. Bergmann saying that if the day should come when this country would join with England in a common union wherein in this country we would have classes and aristocracy as they do in England, that he would just as soon tear up his citizenship papers?

A. No.

Q. You don't recall that?

A. No. I think we have some of that now in this country.

Q. Pardon me?

A. I think we have some of that in this country now, classes and aristocracy.

Mr. Howser: I believe that is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, Mr. Beck; you may go about your business.

The Witness: Thank you, Judge. You are a nice man.

(Testimony of Alexander Beck.)

The Court: Thanks for the compliment. It's too bad you can't vote for me.

(Witness excused.)

Mr. Dean: Mr. Coleman, will you take the stand, please? [102]

WALTER E. COLEMAN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Walter E. Coleman.

Direct Examination

Q. By Mr. Dean: Mr. Coleman, what is your occupation? A. Jewelry man.

Q. Where do you live?

A. I live in Long Beach; 1700 Carson. That is my residence.

Q. How long have you lived there?

A. I have lived there a little over a year.

Q. I mean in Long Beach, how long have you lived?

A. I have been in Long Beach about 19 years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. Yes, sir.

Q. How long have you been acquainted with him?

A. Oh, about 3 or 4 years, I guess.

(Testimony of Walter E. Coleman.)

Q. With reference to the year 1940 did you have a conversation with Mr. Bergmann concerning the sending of money to Germany?

A. Well, he was telling me——

Q. Just a moment, please. Do you remember what time of year this conversation took place? Can you fix an approx- [103] imate date?

A. Well, that was in 1940, possibly along in August. It might have been along in there some place.

Q. Was anyone else present during the conversation? A. No.

Q. Will you tell us what it was as you recall it?

A. He said that he had sent \$1500—pardon me for mentioning this, but I had bought property from him and I just related to him, I said, “You have got lots of money.” And he just mentioned that he had sent \$1500 back to Germany.

Q. I see. Did he describe to whom he had sent it in Germany or where he had sent it?

A. No.

Q. Or for the purposes for which it had been sent? A. No, he never said that.

Q. Directing your attention to March of 1942, this year, did you have a conversation with Mr. Bergmann about world conditions or conditions in this country at that time? A. Yes.

Q. Where would you say that conversation took place as you recall it?

A. That was at his home.

(Testimony of Walter E. Coleman.)

Q. In Long Beach? A. Yes, sir.

Q. Who else was present, if anybody?

A. There was nobody else present but Walter and I. [104]

Q. What was the conversation as you recall it?

A. Well, I went down there to see him about some lumber—and it seemed like it is his rule to sleep a little late—about 10:00, I guess, in the morning. I woke him up and he came out and, of course, the newspaper was laying on a little bench out there that he has there, and I picked up the newspaper and said, “Look at this, Walter.”

He read the headlines, looked it over. It was something about Roosevelt had made some plea to the——

Q. You mean the article in the newspaper referred to that?

A. Yes. He had made some plea to the other countries, someway about being careful with each other in a sympathetic way, and said we should come nearer to prayer and things that way.

Q. What was the conversation?

A. Well, then, Walter said that “This son-of-a-bitch of a Roosevelt would get his,” and that “This goddamned religion would have to go.”

Q. Was there anything else said at that time by him that you recall? A. No.

Q. Did you have any conversation with him concerning the taking over of this country by anybody?

(Testimony of Walter E. Coleman.)

A. He said whenever this country was taken over, why, then, we could get things regulated, or something in that form. [105]

Q. Is that the statement as you recall it at this time? A. Well,—(pause)

Q. Is that your best recollection of it?

A. That is it in substance. It has been so long ago.

The Court: Did he mention taken over by whom or what?

The Witness: It would be taken over by Germany.

The Court: Oh.

The Witness: That our system—the Government of Germany is a better one than ours.

Q. By Mr. Dean: Was anything said, Mr. Coleman, about this country being easy to take over, that you recall?

A. Yes. He said, “When it comes to the right time, why, then, it would be easily taken over.”

Q. Did you ever have any conversation with Mr. Bergmann about the FBI? A. Yes.

Q. When did that occur?

A. That was, I believe, along in—it must have been in April or June.

The Court: What year?

The Witness: That was in—I believe that was in 1942, Judge.

The Court: This year?

The Witness: I believe it was. He said that the FBI was on his trail; that he realized those

(Testimony of Walter E. Coleman.)

things, but he said [106] he could outsmart them any time.

Q. By Mr. Dean: Now, Mr. Coleman, since August of this year, 1942, have you seen Mr. Bergmann to talk to him?

A. Yes. Mr. Bergmann came to my store. He called me over the telephone, told me he wanted to talk with me and I told him—I said, “All right, Walter, come on up.”

He came, and there was no one else in the store so I said, “We will just close the front door.” My car sits out in the back of my store and we just walked through the store and I said, “We will go out here.”

Walter asked me if there was any one there and I told him no. I said, “We will go out and sit in the car and talk.” And we did.

Q. Did you have a conversation then?

A. Well, he was telling me that he was awfully grieved, Walter was; he was broken up. The FBI had closed in on him; something about his citizenship, or something that way, and he was telling me about it and was awfully grieved over it.

Q. Do you recall what he said?

A. Well, he went into great rage and I told him that he should calm himself. He went into a great rage of pulling his hair and frothing at the mouth. He would say, “Oh, my father and my mother.” I suppose like any boy would, and so on that way.

(Testimony of Walter E. Coleman.)

Q. Was that all of the conversation? Did you have [107] any conversation concerning your appearance in this case?

A. Yes. At that time he wanted me to make a statement in regard to his character as a citizen of our country, and I told him that I couldn't hardly afford to do that, "You know, Mrs. Coleman, she is a teacher here and," I said, "we can't do that."

Q. Is that the substance of the conversation, Mr. Coleman? A. That is right.

Q. You appeared under subpoena here, did you, Mr. Coleman? A. Yes, sir.

Q. You didn't voluntarily offer to testify here against Mr. Bergmann, did you? A. No, sir.

Mr. Dean: That is all the direct examination, your Honor.

The Court: Did you at that time, while he was telling you his troubles, say anything to him about some of the things that you had in mind or you remembered his telling you? I mean when he was telling you his troubles, did you remind him of some of the things he said to you or may have said to others that didn't exactly sound discreet?

The Witness: No. I told him—I said, "Possibly it is a thing that we have all got to go through with." That "this war is an awful thing." Just something that way. [108]

The Court: All right. Cross examination, Mr. Howser or Mr. Jacobson?

(Testimony of Walter E. Coleman.)

Cross Examination

By Mr. Jacobson:

Q. You talked in the back end of the lot where your store is located? A. Pardon me?

Q. Your conversation, the last one, was in the automobile in the rear of your store?

A. Yes, sir, back of the back door.

Q. Did Mr. Bergmann appear to you to be greatly distressed? A. Yes, sir, he did.

Q. Did he tell you that a suit had been filed against him to revoke his citizenship?

A. Yes.

Q. Did you give him any reason other than the ones you have given in court for not being willing to testify in his behalf?

A. No, that was the only reason that I could give him, the one that I told him.

Q. What did you mean by "it is something we have all got to go through"?

A. Well, different grievances and troubles.

Q. You are not a naturalized citizen yourself, are you? A. Who? [109]

Q. You are not foreign born, a person who has been naturalized? A. No.

Q. You were born in this country?

A. No, sir, in Arkansas.

The Court: He means not in California. Arkansas is a part of the United States, I hope.

The Witness: That is right.

Q. By Mr. Jacobson: You didn't have to be naturalized coming from Arkansas, did you?

(Testimony of Walter E. Coleman.)

A. No.

Q. Mr. Coleman, did Mr. Bergmann tell you the nature of the charges against him?

A. I believe he did.

Q. Well, now, recalling that, what did he say?

A. I don't remember just what all he did say because I wasn't interested so much, because my mind was on my work.

Q. That is, you wanted to go back to the store?

A. Yes, sir.

Q. Did you express the opinion to him that he was innocent of the charges? A. No, sir.

Q. Did you express any opinion that he was guilty of the charge? A. No, sir.

Q. Did you know Bergmann when he received his citizen- [110] ship?

A. I didn't know when he received it.

Q. He never said anything to you about that?

A. No, he never mentioned it.

Q. Now, you had a great many conversations with Mr. Bergmann, did you? A. Yes, sir.

Q. How many would you say you have had?

A. Every time I see him.

Q. Well, how often would that be during the time you have known him?

A. I couldn't say because when we were buying that piece of property, in and out, he was there sometimes twice and three times a day.

Q. Would you say you have had as many as a hundred conversations with him?

(Testimony of Walter E. Coleman.)

A. Well, I don't know whether or not I have seen him that many times.

Q. I just want your best estimate.

A. Well, possibly I have seen him 40 or 50 times.

Q. And talked to him on most every occasion?

A. Sure; say "Howdy" or "Goodbye" or something.

Q. Now, did you discuss with him political views; as to whether the National Administration was a good administration or an unsatisfactory one?

A. Well, he would bring those subjects up sometimes, [111] but we didn't go into them to the deepest.

Q. Oh, how deeply did you go into them?

A. Well, possibly he would say this is right or that is right and I would say yes or no, and so on that way. That is about the substance of it.

Q. Mr. Bergmann was intensely interested, was he not, in the policies and views of President Roosevelt? A. Pardon me?

Q. He was intensely interested in the policies and views of President Roosevelt?

A. Well, I don't know whether he was interested in—he was interested in what way?

Q. I was going to ask you. Did he express any views, whether he agreed with President Roosevelt or disagreed with President Roosevelt?

A. He wasn't interested in his behalf.

Q. Well, was he interested against him?

A. Well, yes, in his general sentiments he was.

(Testimony of Walter E. Coleman.)

Q. Was that sentiment opposite from your own political convictions? A. Why, yes.

Q. You were very much a pro-Roosevelt supporter, were you not? A. Pardon me?

Q. You were very much a pro-Roosevelt supporter, were you not? That is, you believed in his policies? [112]

A. I didn't vote for him, but yet he is my President.

Q. Well, did you agree then with everything he has done since he became president?

A. Well, I couldn't say that because I don't know what all he has done.

Q. Did you ever discuss with Mr. Bergmann the question of the wisdom or lack of wisdom of sending American merchandise to England under the so-called lend-lease plan?

A. I don't remember.

Q. Did you ever discuss with Mr. Bergmann whether or not the policy of the isolationists or the policy of the interventionists should govern?

A. I don't remember.

Q. Do you remember discussing with Mr. Bergmann whether the views of Senator Nye and Senator Wheeler were sound, or whether the views of the opposite party were sound?

A. Oh, possibly there would be some statement come out that he would mention. He would say, "That is right," or I would say it was right, or I would say it was wrong, and he would say it was wrong, and that is about the end of it.

(Testimony of Walter E. Coleman.)

Q. Do I understand that you told Mr. Bergmann that because you were in business and because your wife is a school teacher that it was unwise for you to testify in his behalf?

A. Well, I just told him I thought it was unwise for [113] me to do it; that I couldn't afford to do it.

Q. What did you have in mind when you said that? A. Just that.

Q. What did you have in mind? Why was it unwise, in your opinion, to testify in his behalf?

A. I am an American citizen.

Q. He is, too, is he not? A. I don't know.

Q. Well, was the prejudice or the feeling in the community in which you lived such that you felt your business would suffer if you testified on behalf of Mr. Bergmann? A. No, sir.

Q. Was the sentiment such that you felt that your wife might be embarrassed in her position as a public official if you testified in behalf of Mr. Bergmann?

A. Of course, she would have been, but that wasn't the full reason. I just didn't want to do it.

Q. Why didn't you want to testify in court on behalf of Mr. Bergmann?

A. Why, because I didn't think it was right.

Q. That is what I want to find out; what was wrong about the request?

A. Well, the statements that he had made and so on; I just didn't think it was right.

(Testimony of Walter E. Coleman.)

Q. You didn't want to come to court and testify at all at his request. Is that right? [114]

A. That is right.

Q. Now, you have observed the work he has done in Long Beach, have you not?

A. Yes, sir.

Q. And the improvements he has made to his property? A. Yes.

Q. At any time did Mr. Bergmann discuss with you what he intended to do with his property at the time of his passing?

A. At the time of his passing?

Q. Yes.

A. He said he was going to will it or he had a will or was going to will it to the Y.M.C.A., or some institution in some way.

Q. The Salvation Army?

A. Something like that.

Q. Do you recall him making that statement?

A. Pardon me?

Q. Do you recall him making that statement?

A. Oh, yes; yes.

Q. This newspaper that you found on the bench outside of his apartment, that was some American newspaper, was it not?

A. Oh, yes, sure; the Morning Sun, I think, or something like that.

Q. At least, some paper published in Los Angeles County? [115] A. Yes.

Q. And in the English language; is that right?

A. I think it was, yes.

(Testimony of Walter E. Coleman.)

Q. During all the time you have known Mr. Bergmann, you haven't known of him reading any German magazines or newspapers, have you?

A. No.

Q. Was the question of union with England ever discussed between you and Mr. Bergmann?

A. No.

Q. Do you remember a book that came out urging a common government for England and America?

A. No.

Q. At any rate, you don't recall discussing that question with Mr. Bergmann?

A. No.

Q. Mr. Bergmann never elaborated on his statement that he had sent \$1500 to Germany, had he?

A. Pardon me?

Q. He didn't elaborate on his statement to you that he had sent \$1500 to Germany?

A. He told me that he had sent it.

The Court: But he didn't go into detail as to whom he sent it?

The Witness: Oh, no.

The Court: Or for what purpose? [116]

The Witness: No.

Q. By Mr. Jacobson: Did he say when he had sent it?

A. No, he didn't. I was just kidding him about him having lots of money and I just popped off and he told me about it, that is all.

Mr. Jacobson: That is all. Thank you.

Mr. Dean: No redirect examination, you Honor.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Shields, will you take the stand?

THOMAS STEPHEN SHIELDS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: What is your name?

The Witness: Thomas Stephen Shields,
S-h-i-e-l-d-s.

Direct Examination

By Mr. Dean:

Q. Mr. Shields, what is your full name?

A. Thomas Stephen Shields.

Q. What is your occupation?

A. Truck driver for the Los Angeles County Museum.

Q. Do you know the defendant, Friedrich Walter Bergmann?

A. The occasion I had to meet Mr. Bergmann was at the time I was assigned to take a load down to Long Beach from the museum. [117]

Q. Was that with Mr. Williams who has testified in this case heretofore?

A. Mr. Williams was my swamper; in other words, my helper.

Q. Do you recall the date of delivery of those objects to Long Beach?

A. It was April the 24th, as I remember.

(Testimony of Thomas Stephen Shields.)

Q. Had you seen Mr. Bergmann on any other occasion other than that?

A. The only time I ever seen Mr. Bergmann was the time when Mr. Wiedner and he were packing the objects that were going back to Long Beach.

Q. I see.

Now, at the time you testified concerning the return of these objects to Long Beach, did you have a conversation with Mr. Bergmann?

A. Well, it was just one of those things. Those conversations kept up and he talked about the general run of subjects, such as Hitler, his brother.

Q. What conversation, if any, did you have about Hitler?

A. Well, he said what a great man Hitler was and the great things he was going to do for Germany, and things like that. To him Hitler was the real man.

Q. Well, do you remember anything else he said about Hitler, or was that the substance of the conversation? [118]

A. Well, he talked about Hitler, about what he was going to do with the Jewish people, the cause of all the things in the world, and criticized also President Roosevelt along with the Jewish capitalistic system.

Q. Did he say anything about the Nazis in Germany? Did he mention that word "Nazis" during the conversation?

A. I don't recall him saying anything about the Nazis directly; although, of course, during the con-

(Testimony of Thomas Stephen Shields.)

versation—when Mr. Williams and I landed there, Mr. Bergmann was the only one there at the time, and later in the afternoon another man came on the scene; and it was more or less in between taking five minutes unloading the merchandise and taking it away that we talked about this and that and the other thing, the subject of politics and so forth.

Q. Did you ever have any conversation concerning his service in the first World War?

A. He talked about the time he was in the German Army; said he was an officer and was stationed down in Turkey. He said the gun crews were manned, in other words, by Turkish soldiers and officered by the German military.

Q. Did you have any conversation concerning his brother or one he referred to as his brother?

A. He talked about his brother being connected with the underseas activity, U-boat service. He said he was over to Japan. He was a commander of this German U-boat and was instructing the Japanese in the art of submarine warfare. [119] That was the only brother I heard him mention.

Q. What was his demeanor or appearance or perhaps both during this conversation?

A. Well, when he went into a tirade against the Government and the Jewish people, especially our President, he became very excited and little bits of froth would form on his lips. He became very, very excited.

(Testimony of Thomas Stephen Shields.)

Q. Well, did you have a conversation with him concerning any photographs?

A. He told of seeing a photograph that was exhibited to him by the German consul here showing a British man-of-war in the harbor in New York that had been damaged in the sea engagement with some German ship.

Q. Did he tell you who had shown him or had given him the photograph?

A. He said the German consul. What that consul's name is, I don't know; but he said the German consul showed it to him, showed the photograph to him.

The Court: What significance, if any, did he attach to that? What did he use it for? With what point did he bring out the showing of the photograph?

The Witness: The only thing I could make out of it was he was trying to show us just what he knew about things that were going along, sir. That is all I could make out it, sir.

Q. By Mr. Dean: Do you recall any other conversation [120] you had with him concerning conditions in the world or this country or Germany?

A. Well, from what I could gather from his conversation—some other men came in on the scene later in the afternoon—that after this thing was all over the Germans would really have the world at their feet.

Q. Did you see him do anything unusual when the conversation had reached a conclusion?

(Testimony of Thomas Stephen Shields.)

A. The only thing that appeared very unusual to me, when I had the truck all fixed up to go back to the museum, he just clicked his heels and said "Heil Hitler."

Q. Can you describe what he did; can you show the Court what he did?

A. I am not a very clever German militarist. He did this (illustrating) and said, "Heil Hitler."

Q. What was his demeanor when he said that?

A. Very serious.

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

By Mr. Howser:

Q. Mr. Shields, you say at the time he did that you had the truck all packed up and you were ready to leave?

A. Well, we had loaded the dollies and gear on the truck that we had used to transport the cases back into the [121] little hole in the wall where we had stacked the merchandise, and that is the salutation he gave us when we departed.

Q. For all purposes from what you observed, this "Heil Hitler" was his manner of saying good-bye. Isn't that true?

Mr. Dean: I object to that on the ground it calls for a conclusion.

The Court: That is all right. No. I have been trying to find out when it was used myself.

(Testimony of Thomas Stephen Shields.)

Mr. Dean: I withdraw the objection, your Honor.

The Court: It was used chiefly as a greeting, a salutation on leaving?

The Witness: I wouldn't know the routine of the German army or the Nazis.

The Court: That is all right. Now, what was the question?

Mr. Howser: I asked the witness, your Honor, if this wasn't the farewell expression.

The Court: All right.

The Witness: I don't know whether that is the general routine of giving farewell or not, but that is what he said when we left. He said, "Heil Hitler," and away we went.

Q. By Mr. Howser: What did you say?

A. I didn't know what to say, to tell you the truth. I didn't know whether to just let it go at that and go on or what. [122]

The Court: What did you decide to do? What did you do; just let it go?

The Witness: Just let it go.

The Court: You just dropped it?

The Witness: I just dropped it, yes, sir.

Q. By Mr. Howser: Did you have any thought at that time that he was perhaps a little touched in the head, as the expression goes?

Mr. Dean: I object to that on the ground it calls for a conclusion.

Q. By Mr. Howser: Mr. Shields, you concluded

(Testimony of Thomas Stephen Shields.)

from all this conversation with Mr. Bergmann, did you not, from his constant conversation, that he was quite a braggart?

A. Well, he didn't appear to be a braggart. He seemed to be very dissatisfied with the set-up in this country.

Q. Dissatisfied or satisfied?

A. Dissatisfied, sir.

Q. Well, he told you about all of his narrow escapes and activities as a German soldier?

A. He told me about narrow escapes as a German soldier?

Q. Yes.

A. The only thing he told me regarding the German soldiers, he said one time he was in a German hospital for the sick, that is, in a rehabilitation ward of the hospital where they were trying to bring him back to his former self [123] again by various means.

Q. Well, he told you also that he had a brother that was quite a U-boat expert?

A. That is what he was talking about. He told us he had a brother that was a U-boat commander who was over in Japan teaching the Japs the art of submarine warfare. He also went on to state that in the next couple of years the Dutch East Indies would go along with the Philippines.

Q. And at that time he also told you that he himself had been an officer in the German Army?

A. That is what he said.

(Testimony of Thomas Stephen Shields.)

Q. You didn't ask him any of these things, did you?

A. I had no particular reason to find out.

Q. In other words, he just volunteered all of this information to you?

A. That is the way it came out.

The Court: You didn't know the man from Adam?

A. The only time I ever saw the gentleman was when he was in the museum packing that material and——

Q. By Mr. Howser: That material had been on exhibition there, hadn't it? A. Yes.

The Court: And you had never met him except on that occasion?

The Witness: That is right.

The Court: You had no occasion to inquire about his [124] antecedents or his prowess and achievements or anything like that?

The Witness: It really meant nothing to me, what he did.

The Court: As a matter of fact, in your job you keep moving exhibits in and out. Sometimes they are paintings and sometimes they are all sorts of objects?

The Witness: That is right.

The Court: Art objects which people bring in and loan to the museum and then take them away. That is a part of the work?

The Witness: Yes, sir.

The Court: Your work?

(Testimony of Thomas Stephen Shields.)

The Witness: Yes, sir.

Q. By Mr. Howser: Mr. Shields, how long had this exhibit been in the Los Angeles museum to your knowledge?

A. I haven't the slightest idea.

Q. Do you know any of the circumstances as to why it was being removed from the Exposition Park to his home?

A. That, sir, I don't know.

Q. Now, in this conversation about Hitler you say that was during what year?

A. The only time I have ever been to this man's house was, as I say, this one time. We started out at about 11:30 in the morning, and by the time we had dinner and reached his place it was somewhere around 1:30, something like that, [125] because I had a very heavy load and it was very top-heavy for bulk so you couldn't drive too fast with the rig.

Q. That was April 24th, 1941?

A. Yes, sir. You see, the reason why I say that is because every day the County requires chauffeurs and truck drivers to make out a report of their activities for that day.

Q. We are sure the date is correct, Mr. Shields, that that is when you were there.

A. Yes, sir.

Q. And during that visit with Mr. Bergmann he told you that he believed Hitler was doing a great work in Germany?

A. That is what his statement was, sir.

(Testimony of Thomas Stephen Shields.)

Q. And he was building up the youth of that country?

A. I don't know anything about the youth being built up.

Q. You don't recall anything about that?

A. Not about youth. For a while the conversation ran so rapid that, as far as minor details go, I don't recall all of those; but the higher lights of the conversation, such as the Jap situation and things like that, the Turkish campaign and things like that, stand out in your mind.

Q. Yes; but he became very excited about the capitalistic system, did he not?

A. He didn't like the set-up at all.

Q. Pardon me? [126]

A. He didn't like the set-up at all. He was very dissatisfied with it.

Q. And he was opposed to militarism of the old Europe? A. I don't recall that.

Q. Now, you say some other gentlemen came on the premises? A. That is right, sir.

Q. Do you know who that party was?

A. No, sir; I had never seen the gentleman before in my life. He was an elderly man. He walked in on the property and talked about Germany as he knew it in the old days and he talked about one time when he worked in the shipyards. He said that some friend of his wanted to get him in bad with the Government and he put a blue print under his mattress or some place in order to involve this man in some kind of a deal with the Government.

(Testimony of Thomas Stephen Shields.)

Q. Did this man appear to be a neighbor there?

A. He seemed to know Mr. Bergmann from the way they greeted each other. It wasn't like strangers meeting.

Q. How was he attired, dressed?

A. Which? The gentleman that came in?

Q. Yes.

A. He had on ordinary clothes.

Q. Overalls? A. No.

Q. And shirt? [127]

A. He just had what you might say street attire, a hat, coat and trousers.

Q. How long was he there?

A. Oh, he was there up to the time we left, as I remember it. He came in in the afternoon. Just what time he arrived on the scene, I don't know. We had worked a while and then took five minutes off and then went back and worked again. The place where we stood these objects was so small that we couldn't work steadily because it was suffocating.

Q. Then Mr. Bergmann told you about seeing a picture of a damaged battleship?

A. A British man-of-war.

Q. The fact of the matter is he told you just about anything you wanted to know, did he not, Mr. Shields?

The Court: Suggesting no one was asking any questions. It seemed to be like Hamlet's soliloquizing.

(Testimony of Thomas Stephen Shields.)

Did you start the conversation about world affairs in general?

The Witness: Well, I know so little of world affairs in general, your Honor, only from what I read in the newspapers, that I am not very thoroughly conversant with that. I would rather listen and be told than make a fool of myself.

The Court: You didn't engage in the conversation? He just started to tell you who he was and what he had done?

The Witness: He talked about this and talked about that and the other thing, in regards to what I stated about [128] his being in the Turkish campaign in the first World War, and so on.

The Court: National capitalism and all that kind of junk?

The Witness: He didn't think very kindly of the set-up in this country and he talked about being responsible for all the ill feelings that the world has now.

The Court: All right.

Mr. Howser: That is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right; you may be excused, Mr. Shields.

The Witness: Thank you, sir.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mrs. Kinder, will you take the stand, please.

MRS. MARGARET KINDER,

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, testified as follows:

The Clerk: What is your full name, please?

The Witness: Mrs. Margaret Kinder, K-i-n-
d-e-r.

Direct Examination

Q. By Mr. Dean: Mrs. Kinder, I am going to ask you to speak just as distinctly and as clearly as you can so counsel for Mr. Bergmann can hear you. A. I will. [129]

Q. Where do you live?

A. 2720 Cedar Avenue, Long Beach.

Q. What is your occupation in Long Beach?

A. I work in my husband's meat market. I am a bookkeeper.

Q. How long have you lived in Long Beach?

A. 18 years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. Yes.

Q. How long have you known him?

A. About 2 years, possibly a little longer.

Q. Now, directing your attention to a time about 2 years ago did you have occasion to negotiate with him concerning a business deal?

A. Well, I wouldn't say "negotiate."

Q. Did you have a conversation concerning a business deal? A. Yes, sir.

Q. Well, now, will you tell us the circumstances surrounding that conversation; and will you fix it

(Testimony of Mrs. Margaret Kinder.)

a little more definitely, if you can, as to the month of the year or season of the year?

A. Well, it was early in 1940. I wanted to move nearer our business and I went to his place to ask him to rent me an apartment. [130]

Q. I see. Well, now, what conversation did you have at that time? By the way, were you alone, just the two or you, or were there others present?

A. He and I were alone at this time.

Q. Will you tell us what the conversation was?

A. Well, he told me he didn't want to rent an apartment, that he wanted to live alone; that he had had a great many chances to rent his apartment but that he didn't want to; however, he was interested in leasing the place to a responsible person.

Q. Did you have any conversation with him at that time concerning a return trip to Germany?

A. Yes, sir. He told me that is why he wanted to lease the place. He would like to get his affairs in shape so he could go to Germany.

Q. Did you say anything to him at this time when he told you he wanted to go to Germany?

A. Yes. I told him he was living in a wonderful country; why did he want to go over there. Germany was at war and I should think with his money and the interests he had here, that he would be better off in this country.

Q. Did he make any reply to that statement?

A. Yes, sir, he did.

(Testimony of Mrs. Margaret Kinder.)

Q. What was his reply as you recall it, Mrs. Kinder?

A. Well, he said he was a German. I believe he told me his mother was there and he wanted to go back and see his [131] mother; and that he really didn't fit in this country so well. He was lonely here.

Q. Did he say anything about the war, the conduct of the war by Germany in connection with his return?

A. Will you repeat that, please?

Q. Yes.

Did you have any conversation with him at this time concerning the war which Germany was engaged in?

A. I stated to him if he went to Germany he would have to participate in the war.

Q. What did he say, if anything, to that statement?

A. He told me he fought for Germany in the other World War and that he would again.

Q. Did you have any conversation with him concerning the political system in this country at that time, Mrs. Kinder?

A. I don't remember if it was at that time or at a later time. I couldn't tell you which time it was.

Q. I see. Well, I will come to that later in the event you are not certain.

Did you have any discussion with him concerning his business experience in Long Beach, his

(Testimony of Mrs. Margaret Kinder.)

success in business, let's put it that way,—in Long Beach?

A. Yes, sir. He told me that he had been very successful in Long Beach; that he had made a lot of money.

Q. Did you have any conversation with him concerning [132] the cause of his making the money, the reasons for it?

A. Yes. I believe he told me he made his money from oil.

Q. I see.

Is that all that you recall of his conversation concerning his success in business?

A. (Pause)

Q. Let me ask you this: Did he attribute his success to any particular thing?

A. Yes, sir, he did.

Q. What did he say?

A. He told me he had studied soil and that when he saw the land down there where his property now is that he was sure there was oil there.

Q. Did you have any subsequent conversations with him at any other time?

A. Oh, yes.

Q. When was the next time you had a conversation with him concerning the same things you have discussed here if you did have another one on those subjects?

A. It was some time before he talked any more on those subjects. I have talked to him a great many times, but it is possibly a year later——

(Testimony of Mrs. Margaret Kinder.)

Q. I see.

A. —that I talked to him again.

Q. Where did this conversation take place that occurred [133] a year later? A. In his home.

Q. His home? A. Yes.

Q. Were there just the two of you there?

A. My husband was with me.

Q. That would be in the early part of 1941?

A. No, that wasn't in the early part of '41. I would say it was along in April, perhaps March or April.

Q. Now, to the best of your ability, will you tell us what that conversation was, Mrs. Kinder?

A. Yes. My previous conversations with him I had told him that we were paying quite a little rent for the building that we occupied and he mentioned that he was interested in getting a little revenue from his property which is about a block from the building we rent and that if it could be worked out he would like to build a building for our business with an apartment above and give us a long lease on the property, and he would also like to lease us the apartment that he occupies.

Q. Now, other than the discussion concerning the projected business deal did you have any further conversation with him?

A. Yes. He said the reason he wanted to do that—he again asked us to lease his apartment because he wanted to leave the country, but at this time he didn't tell me he [134] wanted to go to Germany.

(Testimony of Mrs. Margaret Kinder.)

Q. Was that the substance of the conversation at that time?

A. Oh, no; we talked about other things.

Q. What did you talk about?

A. Well, he told us that he was dissatisfied with the political situation and that Hitler did have a plan for the world and he thought it was a good plan.

Q. Was that about the substance of that conversation?

A. Oh, no; we talked about other things, too. He showed us through his apartments and we talked in his yard for some little time.

Q. What I mean is, did you have any other conversation concerning matters with respect to which I have interrogated you, Mrs. Kinder?

The Court: World affairs.

Q. By Mr. Dean: World affairs, yes.

The Court: Something like that, Mrs. Kinder.

The Witness: Yes, he did say that the Jews were getting in control of our country and that Hitler had a good plan in regards to the Jews. He had run them out of Germany and it would be well if they could be run out of our country, too.

Q. By Mr. Dean: Did he say anything else that you recall?

A. Well, he mentioned the political system. However, he talked a little more to my husband than he did to me. I [135] was there, but on this particular night the mosquitoes were very bad.

Q. Did you hear any of the conversation between

(Testimony of Mrs. Margaret Kinder.)

your husband and Mr. Bergmann that you haven't told us concerning world affairs or conditions in this country?

A. Well, I gathered from the conversation he was dissatisfied with the political situation in our country and also with our association with England. We were at that time sympathizing with England a good deal and he was against that.

Q. Now, do you think you have told us about the substance of the conversation?

A. Well, I believe I have.

Mr. Dean: I see; that is all the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

Q. By Mr. Jacobson: Did you make any written notes of these conversations? A. Oh, no.

Q. When was the first time you recalled them to mind after you had them?

A. Will you repeat that, please?

Mr. Jacobson: Will you read the question, Mr. Reporter.

(Question read by the reporter.)

The Witness: I recalled them to mind right away and I [136] went back over to the market and told my husband and his brother.

Q. Well, after you told your husband and your brother—that was the same day? A. Yes.

Q. When was the next time you thought about the conversations?

(Testimony of Mrs. Margaret Kinder.)

A. Oh, I couldn't tell you when I next thought about the conversations, but I thought about it a good many times when I would see Mr. Bergmann. I thought to myself, "I believe that you are a German sympathizer."

Q. These conversations made you feel bitter towards Mr. Bergmann? A. No, sir.

Q. Pardon me? A. No, sir.

Q. But you did feel he was disloyal?

A. Well, there was a little doubt in my mind as to his loyalty to this country, yes.

Q. Now, all of these conversations occurred before the United States was at war?

A. Yes, sir.

Q. Now, isn't it a fact, Mrs. Kinder, that the feeling you had was this: As between England and Germany, he was definitely pro-German on that? A. No. [137]

Q. Who did you think he was for in the war before we got into it? A. Germany.

Q. That is right; and he was very anti-British?

A. And also dissatisfied with our country.

Q. And he didn't like——

A. The way it was being run.

Q. Did he specify?

A. Yes, I believe he did.

Q. Well, was he opposed to President Roosevelt's policies?

A. He mentioned the war debt; that England hadn't met her war debt in the other war.

Q. And he thought she should?

(Testimony of Mrs. Margaret Kinder.)

A. Oh, yes.

Q. Was anything said about the effects of the Versailles Treaty?

A. No, I don't recall that.

Q. Was there any discussion about a proposed plan to unite England and the United States into one nation with one government?

A. I don't recall.

Q. Now, you haven't talked with him, as I understand it, since December 7, 1942, have you?

Mr. Dean: You mean 1941, counsel?

Q. By Mr. Jacobson: You haven't talked with him, as [138] I understand it, since December 7, 1941, have you?

A. Oh, yes.

Q. Did any of these conversations occur after that?

A. Pardon me?

Q. Did any of the conversations you gave on direct examination occur after the United States entered the war?

A. No, sir.

Q. Now, was anything said in these conversations about the Jews, Mrs. Kinder?

A. Yes, sir.

Q. What did he say?

A. Well, I believe he mentioned that the Jews were monopolizing business and that if they were taken out of the country we would get along better, something of that sort.

Q. When he used the phrase "our country"—did he use the phrase "we would be better off if they were out of our country"?

A. I don't know.

(Testimony of Mrs. Margaret Kinder.)

Q. I understood you to say that on direct examination.

A. I couldn't repeat Mr. Bergmann's words.

Q. Have you lived down there in the neighborhood where Mr. Bergmann has for any length of time?

A. I don't live there now, but I did live there for a year and two months.

Q. Had he completed the building of his apartment house when you moved down there? [139]

A. What apartment house do you refer to?

Q. Oh, those 7 or 8 apartments on West Seaside.

A. They were completed before I moved down there.

Q. And the place was all landscaped before you moved into the neighborhood?

A. Well, it was a nice-looking place. I don't know what improvements you refer to.

Q. Well, you know the place at 1245 to 1255 West Seaside Boulevard in the city of Long Beach, do you not? A. Yes, I do.

Q. There are 8 white stucco apartments there?

A. Yes.

Q. And they sit upon about six lots?

A. Yes, sir.

Q. Now, when you moved into the vicinity of that address, were the apartments and garages completed? Had they been built? A. Oh, yes.

Q. So you don't know anything about the improvements he had put on the property himself?

(Testimony of Mrs. Margaret Kinder.)

A. Prior to that, no, I don't.

Q. This discussion about putting up a building for you and your husband's butcher shop, did you say?

A. Yes, we have a small wholesale meat business.

Q. Those negotiations were never completed?

A. No, sir. [140]

Q. You didn't have the building built or you didn't lease the apartment? A. No.

Q. Now, in speaking of service in World War I did he ever mention anything about his family?

A. I believe he told me on more than one occasion about his mother, but I don't recall any other members of his family being mentioned to me.

Q. Do you recall him stating that she was very old and he hoped he could go and see her before she died?

A. I don't know as he mentioned her death, but I believe he told me his mother was very old and she meant a great deal to him.

Q. Do you recall how long a term lease he had in mind for the apartment if he was to lease that building to you? Or were you to buy that?

A. Well, he talked to my husband more about that than he did to me, but I believe he was to retain the ownership of the building. I believe he mentioned he would give us a lease for as long a time as we wanted.

Q. That was on the butcher shop?

A. Yes.

(Testimony of Mrs. Margaret Kinder.)

Q. Did he give you any estimate or make any suggestion about the term of the lease on the apartment house?

A. Yes, he did; but I wasn't at all interested in the apartments and I didn't pay a great deal of attention to it. [141] I have no interest in rentals at all.

Q. Your full time is occupied working in your husband's butcher shop? A. Yes, sir.

Q. And I presume in keeping house also?

A. Yes, sir.

Mr. Jacobson: That is all.

Mr. Dean: No redirect examination, your Honor.

The Court: On these various occasions when you discussed world affairs, who brought up the subject?

The Witness: Mr. Bergmann.

The Court: All right.

(Witness excused.)

The Court: We will take a short recess.

(A short recess was taken after which the proceedings were resumed as follows:)

The Court: All right. Let's proceed, gentlemen.

Mr. Dean: Mrs. Huggins, will you take the stand, please?

ANNA HUGGINS,

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, testified as follows:

The Clerk: Your name, please?

The Witness: Anna Huggins.

Direct Examination

Q. By Mr. Dean: Mrs. Huggins, you are the wife of [142] the Mr. Huggins who testified this morning in this case. Is that right?

A. Yes, sir.

Q. And you live in Long Beach, do you?

A. Yes, sir.

Q. How long have you lived there?

A. Two years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. I am.

Q. Directing your attention to some time early in 1941, Mrs. Huggins, did Mr. Bergmann visit your home? A. He did.

Q. Who was with you at the time of the visit?

A. My mother-in-law. My husband's mother.

Q. Was anyone else there other than Mr. Bergmann? A. And my husband.

Q. And your husband? A. Yes.

Q. Did you have a conversation with him at that time?

A. Not very much. I introduced him to——

Q. Excuse me just a moment, Mrs. Huggins. Can you tell us more definitely when this took place?

A. In the spring of '41.

(Testimony of Anna Huggins.)

Q. All right; now, will you tell us the conversation you had with him, if any, at that time? [143]

A. My mother-in-law was there and I introduced Mr. Bergmann to my mother-in-law. Her name was Duell. He said to her—started to talk German to her and she said, “I don’t speak German.”

“You are French, maybe?”

“No, just plain American.”

He said, “I am a Nazi.”

Q. That is the substance of what you heard him say? A. That is all.

Mr. Dean: That is all the direct examination, your Honor.

Cross Examination

Q. By Mr. Howser: Was he smiling or did you observe his appearance at that time?

A. I really didn’t because he was speaking to my mother-in-law.

Q. You cannot say whether or not he was merely jesting?

A. Whether he was serious or not I don’t know.

Mr. Howser: That is all.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Williams, will you take the stand, please? [144]

J. M. WILLIAMS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: J. M. Williams, W-i-l-l-i-a-m-s.

Direct Examination

Q. By Mr. Dean: Mr. Williams, what is your occupation?

A. I am vice-president of the Bank of America in Long Beach.

Q. How long have you lived in Long Beach?

A. About 9 years.

Q. Have you been associated with the bank during that entire period of time?

A. Yes, sir.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann, Mr. Williams?

A. Yes.

Q. What is the nature of your acquaintance? A business relationship? A. Yes.

Q. Directing your attention to the year 1940 shortly after the fall of France, did you have a conversation with Mr. Bergmann in your office?

A. Yes, sir.

Q. Were just the two of you present? [145]

A. There were other people in the office, of course, but my conversation at the time was just between the two of us.

Q. I see.

(Testimony of J. M. Williams.)

I mentioned "shortly after the fall of France." Can you fix the date any more closely than that?

A. No, sir, I can't, except that it would have been after the fall of France, probably July and possibly August.

Q. Now, at this time during this conversation did you have a discussion with him concerning world economy? A. Yes.

Q. Will you tell us what the substance or the exact conversation, if you remember, was that you had at that time?

A. Of course, we were all much interested in the war situation at the time and I recall asking Mr. Bergmann how he thought it looked, and he said in his opinion Hitler would be in London about September 15th, and that the war would then be over. And he thought that that would be—these are not exact words; I am not clear as to the words of the conversation—but he thought that was a good prospect, that upon the completion of the war the German plan of world economics would be put into effect.

Q. Did he describe what the plan of economics was?

A. Yes. He told me he thought all the countries of the world would be allotted goods and trade in accordance with their needs; that Germany would be the clearing house and would determine or fix the quotas or needs of the other [146] countries and would see that they got supplies and trade in accordance with such quotas.

(Testimony of J. M. Williams.)

Q. Did he indicate whether or not this quota plan would take in a part or all of the world?

A. Well, I can't say that that point was mentioned specifically. The impression I had was pretty much the whole world.

Q. About this time or during this discussion did you have a conversation with him concerning Adolph Hitler?

A. Yes. It was mentioned. Mr. Bergmann at that time had a good opinion of Hitler. I recall his telling me that he thought Hitler was in reality a good, kind Christian gentleman. He said that Hitler didn't want to harm anybody, only wanted to do good.

Q. Did you have any conversation with him concerning the American Press at this time?

A. In the conversation he said the bad impression that we have in this country of Hitler was due to the misrepresentations of the press in this country. He said the press was controlled by the Jews and that the press was responsible for it.

Q. Did you have any conversation with him concerning the first World War or his service in the First World War?

A. I am not sure. I had several conversations with Mr. Bergmann and I don't specifically recall that he talked about the first World War. [147]

Q. Now, have you ever had a discussion with him concerning war bonds, Mr. Williams?

A. Yes.

Q. Will you tell us what that conversation was?

(Testimony of J. M. Williams.)

A. That was this spring, probably around March, April or May of this year.

Q. I see.

A. He asked me if I was able to tell him whether it was true that the sale of war bonds for the month of March, I think it was, was only half of what it had been for the month of January.

Q. What was his facial expression or demeanor when he asked you that question?

A. Well, I don't particularly recall. He seemed a little disappointed, perhaps, that I didn't know the answer.

Q. I see.

Now, have you had other conversations with him since the attack upon Pearl Harbor on December 7th?

A. Yes, I have.

Q. During those conversations did you ever discuss with him the American political system or economic system?

A. Yes, it was discussed in connection with some conversations.

Q. Can you fix the dates of these conversations, the approximate dates for us?

A. No, I couldn't, but—except it would have been [148] presumably along in the first half of this year.

Q. The first half of 1942? A. Yes.

Q. Now, can you give us briefly the conversation that you had or conversations? Were these just between the two of you? A. Yes.

(Testimony of J. M. Williams.)

Q. I see.

A. I am hazy on details, of course. I didn't have these conversations with the thought of needing to remember them nor repeat them.

Mr. Bergmann was a rather critical man, rather critical of our Government or of our plan of government, perhaps I should say, or, at least, the administration of our government.

Q. Did you have any conversation concerning correction in our political or economic system?

A. I think he indicated he thought there was a great deal of corruption in the way we ran the Government.

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

Q. By Mr. Jacobson: Mr. Williams, Mr. Bergmann is quite an extensive depositor in your bank, is he not. [149]

A. Yes; he has had very good accounts there at various times.

Q. And over the years you have known him, has Bergmann been very active in his account, in the way of buying and selling stocks on the Exchange?

A. I think so, yes.

Q. When Bergmann asked you about the volume of war bond sales, had there been some discussion about the market for securities?

A. Yes, I think there had been. I think he did

(Testimony of J. M. Williams.)

say that he was interested in knowing because it might influence his investment attitude or words to that effect.

Q. That is, he was interested in knowing how various stocks and bonds were being bought and sold on the Exchange? A. I presume so.

Q. And the sale of U. S. defense bonds would be a factor in that general financial picture. Is that right? A. Yes.

Q. Now, when you spoke about Hitler being a good, kind Christian gentleman, do you remember the details of the conversation? I mean by that did Bergmann give you a reason why he thought Hitler had been so good in Germany?

A. I don't recall that he did. Of course, Mr. Bergmann didn't just come in to me and voluntarily give all this conversation. It came about by reason of the fact I had, up to that time, enjoyed various conversations with him [150] where I found his viewpoint on some things quite interesting and I asked him questions along these lines. I don't recall that I asked him about Hitler, but I might have done so. I mean, I should have said, I don't recall asking him what he thought of Hitler, but his remarks of Hitler, I am sure, came in connection with the viewpoint or attitude that he had toward the future when he expected the war would be over and Hitler would be in control.

Q. Of course, those conversations, with the exception of the war bond conversation, were prior to the United States' entry into the war?

A. Yes, sir.

(Testimony of J. M. Williams.)

Q. The war bond conversation was had this spring: I take it, a few months after Pearl Harbor?

A. That is true.

Q. Now, in giving his views on the administration during the past few years, has the question of so-called New Deal administration come up many times in your conversation with Mr. Bergmann?

A. I should say several times.

Q. It is true, is it not, that he was frankly critical of the administration as such?

A. Yes.

Q. Did he ever give you any reasons?

A. Not that I can specifically recall now. I think he must have indicated reasons, perhaps like most any critic [151] would do in such a conversation, but I don't specifically recall.

Q. I was wondering if he had pointed out, for example, the spending of money and going into debt as one of his reasons.

A. I think very probably he did. I don't clearly recall any such things.

Q. Did you and Mr. Bergmann ever talk about England, whether he liked England or not?

A. Yes. That was a part of the first conversation that I tried to relate.

Q. I wonder if you would just raise your voice a little, please, Mr. Williams.

A. Yes. I said that was part of the conversation I referred to as having taken place in the summer of 1940. He said, in effect that the winning of the war by Germany would do away with the dom-

(Testimony of J. M. Williams.)

ination by England of the world commerce which he, I think, felt or indicated that he felt that was responsible for much of the ills of the world.

Q. Do you recall any discussion about Hitler's so-called youth movement with Mr. Bergmann? Did that come up in any of your visits?

A. Not that I recall. It might have been mentioned in connection with his expressing his opinion of Hitler being a good man, but I don't recall that that phase was discussed. [152]

Q. Are you sure that Bergmann said Hitler is a good man or that Hitler thinks he is a good man?

A. Well, I wouldn't be too sure. The impression I got was—I know he used the word "Christian" and I recall his saying in effect that he was a good, kind Christian gentleman.

Q. In speaking of Germany being the clearing house for economic conditions or whatever you want to call it, business after the war, do you recall specifically whether he included the United States in that world order?

A. No, I don't recall specifically.

Q. Were you acquainted with Mr. Bergmann at the time he was admitted to citizenship?

A. I don't know just when he was admitted to citizenship. I have known him for some five or six years, I think.

Q. Do you recall Mr. Bergmann ever telling you he had been naturalized in the Federal Court?

(Testimony of J. M. Williams.)

A. I think so. At least, I knew that, learned it from somebody.

Q. Did he make any comment to you as to how he felt about receiving his naturalization papers?

A. No, I don't recall our discussing that subject.

Q. Did you ever visit with him in his home?

A. No, sir.

Q. These visits, then, were with you at your desk as vice-president of the bank? [153]

A. That is right.

Q. I take it most of them were rather short?

A. Yes.

Q. And most of them probably concerned financial matters?

A. Oh, I presume so.

Mr. Jacobson: I think that is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, Mr. Williams, you may be excused.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Graham, will you take the stand please?

F. M. GRAHAM,

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, testified as follows:

The Clerk: Will you state your name?

The Witness: F. M. Graham.

Direct Examination

Q. By Mr. Dean: Mr. Graham, what is your occupation. A. Police officer.

Q. With the City of Long Beach?

A. Yes, sir.

Q. How long have you been so employed?

A. Approximately 14 years. [154]

Q. 14 years? A. Yes.

Q. Mr. Graham, I am going to ask you to speak a little bit louder so we can all hear you, if you will, please. A. Yes, sir.

Q. Are you acquainted with the defendant, Friedrich Walter Bergmann? A. Yes, I am.

Q. Over how long a period of time have you known him? A. Approximately 4 years.

Q. Now, have you during that time had any conversations with Mr. Bergmann concerning Adolph Hitler? A. I have.

Q. Do you recall the date of the first conversation you had, or the approximate date?

A. The approximate date of his first mentioning Hitler was during the year 1940.

Q. Do you recall what time during the year?

A. No, I do not.

Q. Were just the two of you together?

(Testimony of F. M. Graham.)

A. No, there was another officer with us.

Q. What was the occasion for your being with Mr. Bergmann? Do you recall?

A. We were riding in a radio car and stopped by where Mr. Bergmann was working and had a short conversation with him regarding conditions in Europe and what he thought about [155] the present conditions just to pass the time away.

Q. It was more or less of a social visit?

A. That is right.

Q. Will you tell us to the best of your recollection what the conversation was that you had concerning Hitler?

A. He said Hitler in his opinion was a wonderful man and the greatest genius to mankind the world had ever known and would go down in history as such; that he had built the most wonderful military machine the world had ever known and had accomplished many things.

Q. Is that about the substance of your conversation concerning Hitler at that time?

A. As I remember, yes.

Q. Did you have any other conversation at this particular time with Mr. Bergmann? A. No.

Q. You had subsequent conversations with him at various times, did you? A. That is right.

Q. Can you recall the next time you had a conversation with him concerning Adolph Hitler or world conditions or the conditions in this country.

A. In the month of September of 1941 I learned from another party that he wanted to lease his

(Testimony of F. M. Graham.)

property on West Seaside, at which time I contacted him and asked him regarding the lease. In that visit back and forth over a period [156] of time there of about three months we discussed conditions considerably during that time.

Q. Well, now, what conditions did you discuss as you recall now?

A. The condition of the world at war mostly, and the Government.

Q. Do you recall any conversation with him concerning the way this Government was being run? Do you recall anything on that subject?

A. Yes. The thing that impressed me, he said our Government was run by a flock of racketeers and that Roosevelt was a dirty double-crossing son-of-a-bitch; that he had double-crossed the German people and sold them out when he passed the Lend-Lease Bill permitting England to obtain goods from this country.

Q. Did you ever have any conversation with him concerning his service in the first World War?

A. I did.

Q. Do you recall when that conversation took place?

A. That took place during the year 1940, early in the year 1940 but I don't remember just when.

Q. Were just the two of you present?

A. Yes, as I remember, just the two of us. I got out of the car and walked over to talk to him on the lot where he was watering some shrubbery, and the condition of the war was brought up and I

(Testimony of F. M. Graham.)

asked him if he had served in [157] the World War, the first World War, and he said yes, and we exchanged viewpoints on that.

I had spent some time in France myself during the first war and we discussed several things and he informed me at that time that he was a captain in the German army and had served near the Dardanelles on the Turkish border.

Q. Mr. Graham, did you have any conversation with Mr. Bergmann concerning a trip that he was going to make out of the country?

A. That was the reason for wanting to lease this property. He said if he could lease this property to me—that was in December of 1941—that he wanted to leave the United States by at least the first of February. Where he would go from this country, he said, to Hawaii, from there to South America where he figured on renting a boat and a crew. After he did that he was going to visit the South Sea Islands and eventually land up somewhere in South Africa.

Q. During this particular conversation was there any discussion concerning his citizenship papers?

A. Well, yes, we talked to him about his citizenship papers. I asked him about his citizenship papers prior to that he said yes, he had them as a business protection; that it was a good business for him to have his papers so that he might carry on his work; and he did enjoy, he said, the protection this country afforded him.

(Testimony of F. M. Graham.)

Further regarding the citizenship papers, he made the [158] statement he would bless the date when he could tear up his citizenship papers and throw them away, leaving this country and returning to Germany to live like a white man the rest of his life.

Q. When was this statement made?

A. That was made, as near as I can recall, about November of 1941.

Q. Have you had any conversation with Mr. Bergmann subsequent to the attack upon Pearl Harbor on December 7th?

A. Yes. I asked him what he thought about——

Q. Excuse me just a moment. Can you tell us when the first one was, Mr. Graham, if you recall?

A. It was about three days after the Japs had attacked Pearl Harbor.

Q. Three days after the attack?

A. Approximately so.

Q. Where did it take place?

A. In his apartment.

Q. Just the two of you were there?

A. Yes, sir.

Q. Now, will you tell us what the conversation was?

A. I asked him what he thought about it; if he didn't think it was kind of a shady deal.

He said, "No, that was inevitable;" that Japan was bound to enter this war because that would complete the plan for the unity of the Axis powers. [159]

(Testimony of F. M. Graham.)

Q. Was that all he said concerning the Axis powers at that time?

A. He said they would eventually control the entire world and that the reason for Japan making this attack was because they were entitled to all the islands and territory in that portion of the country; that this country had stolen the Philippine Islands from the Spanish Government in the early days and that rightfully that portion of the world belonged to the yellow race and he was glad to see them take it.

Q. Now, subsequent to that conversation which you said occurred about three days after December 7th, namely, December 10th, 1941, did you have any other conversations with Mr. Bergmann concerning world conditions or conditions in this country, or his relationship to this country?

A. Yes. I talked to Mr. Bergmann regarding the revocation of his citizenship papers and he made the statement——

Mr. Howser: Your Honor, may we have the date of this conversation?

The Court: Yes.

Q. By Mr. Dean: Do you recall the date of the next conversation, Mr. Graham?

A. You mean regarding the citizenship papers?

Q. The next conversation you had, yes, with regard to the citizenship papers. When was the next conversation you had regarding citizenship papers? [160]

A. I had asked Mr. Bergmann before—this was

(Testimony of F. M. Graham.)

along in November, I think, of 1941—if he had his citizenship papers.

He said yes, that he had had them for about four years and that he figured it was good business. He more or less left the impression that——

Mr. Howser: Your Honor, we object to any impression he left.

The Court: That is right. It is very important—you have testified in court before—that you give the substance of the conversation. You may have gathered the impression from something he didn't say.

Q. By Mr. Dean: Was there anything said that you have not testified to, Mr. Graham, during these conversations that you have related concerning his citizenship papers? Is there anything he said that you have not told us during these particular conversations?

A. Regarding the citizenship papers, I don't believe there is.

Q. Now, after December 10, 1941, which is the last conversation that you have related to us, have you had any other conversation concerning world conditions or conditions in this country with Mr. Bergmann?

A. Yes. I asked him how he thought the war would go, and he said eventually——

Mr. Howser: Your Honor, may we have the date of this [161] conversation?

The Court: Yes. Give us the date if you can.

(Testimony of F. M. Graham.)

Q. By Mr. Dean: When was this conversation, Mr. Graham? Can you approximate the date?

A. That was possibly in August, I imagine.

Q. Of 1942? A. I believe it is.

Q. I see.

All right; now, will you tell us what was said at that time?

A. He received notice that the FBI were contemplating revoking his citizenship papers. In fact, I had noticed a heading in the newspaper regarding the same. I went down and talked to him about it and he said he didn't give a damn if they did revoke his papers; that it was perfectly all right with him; that he had already sent enough securities to Germany to take care of Walter as long as he lived; and if they confiscated everything he had, that it was all right with him.

The Court: Have you given us the date of that conversation, Officer?

The Witness: That was about August of 1942.

The Court: Let's see. This proceeding was instituted in July, wasn't it?

Mr. Howser: Correct.

Mr. Dean: I believe the complaint was filed in July. [162]

The Court: The complaint was filed July 3rd.

Q. By Mr. Dean: Now, was that the substance of the conversation you had at that time, Mr. Graham?

A. The most important part of it, yes.

Q. Well, now, have you had any subsequent con-

(Testimony of F. M. Graham.)

versations with him following that first conversation? I say, "following that first conversation," the conversation in August, 1942 that you just related. Have you had any other conversations with the defendant?

A. One conversation I had with him was—I don't remember the date, but it was very impressive to me.

Q. Approximately what date?

A. That was in 1940, regarding life in Germany. He said he was born in Germany, educated there and was proud to say that he was a German; that he was a graduate from the University of Bremen, Germany; that he was born of German parentage of great military background, of which he was very proud. He said he hoped some day to return there where he would wed a woman and live like a white man the rest of his life; further stating there was no American woman in his opinion who was fit to be the wife of a real German.

Q. Directing your attention to the month of August of this year, or subsequent to that time, have you had any conversations with the defendant concerning this case? A. Yes. [163]

Q. Since the institution of these proceedings?

A. Yes.

Q. Can you tell us the approximate date of that conversation?

A. About the last time I talked to him was in September, I believe. He asked me if I would

(Testimony of F. M. Graham.)

please forget everything as a special favor to him and as a particular friend——

Q. Excuse me, Mr. Graham. I am going to ask you to speak more clearly.

A. If I would please forget everything that we had ever talked about except one thing that he wanted me to be sure and remember, and that was the fact that after the war is over he wanted to return to Germany and see his mother; and if I would come here and testify to that on his behalf.

Q. Now, was there anything else said about Germany during that conversation?

A. No, nothing that I can remember.

The Court: How did that conversation come up, Mr. Graham?

The Witness: Sometimes I would ask a direct question.

The Court: No, this last particular conversation that you mentioned. Had you mentioned the fact that you might be a witness, or how did the conversation with regard to your appearing in this case come up?

The Witness: I went down and asked Mr. Bergmann how the [164] case was proceeding. If I remember right, I think that was my question to him; or what he knew of the outcome, or what he thought the outcome of the case would be.

The Court: I see.

Q. By Mr. Dean: Now, have you related to us the substance of the conversation on that particular occasion?

(Testimony of F. M. Graham.)

A. As best I can remember, I have.

Q. Have you had any other conversations which followed that? A. No, not that I remember.

Q. Have you had any conversation with Mr. Bergmann at any time with reference to his giving anything to Germany? A. Yes. He said——

Q. Excuse me, Mr. Graham. When did he make this statement to you?

A. This was during the year 1940.

Q. I see.

A. Regarding a communication with his brother in Germany. He said that he had made this communication through the German consul at San Francisco who in turn turned the money and communication over to the Russian consul so it would go to Russia and then from Russia into Germany. That was his mode of communication until Russia entered the war.

Q. Have you ever had any conversation with him at any time concerning his ties, personal ties or feelings, let's put it that way, towards Germany? [165]

A. Feelings towards Germany?

Q. Just a moment. Do you remember the date of the conversation? A. I do not.

Q. Can you fix the year?

A. Approximately 1940.

Q. Were just the two of you talking?

A. There was one time we had a conversation regarding the sinking of the battleship *Repulse* and

(Testimony of F. M. Graham.)

the Prince of Wales. That was in the presence of my wife.

I asked Mr. Bergmann if he had heard the news and he said, "News of what?"

I said, "It came over the radio that the *Repulse* and *Prince of Wales* had been sunk."

He said, "That is just absolutely too good to be true," and he went on to explain the tonnage of each one of these ships, the amount and size of guns they carried and the crew, the displacement which, in my opinion, was——

Mr. Howser: Your Honor, we object to his opinion.

The Court: Yes. Don't give your opinion unless you told him at that time.

The Witness: It was an amazing thing for any man to say.

The Court: Yes, I understand that. Did you tell him so?

The Witness: Yes, I did. [166]

The Court: All right; if you told him so, it is all right. What you thought is not important.

Q. By Mr. Dean: Are you positive the conversation related to the sinking of the battleships *Repulse* and *Prince of Wales*?

A. That was the main topic that was brought out at the beginning of the conversation, but it led on into other things.

Q. I am just asking you whether or not you are sure those were the names of the vessels that were discussed during the conversation.

(Testimony of F. M. Graham.)

A. Absolutely.

Mr. Dean: I think that is all the direct examination.

The Court: Cross-examine.

Cross Examination

Q. By Mr. Howser: Mr. Graham, where did this conversation take place concerning the Prince of Wales and the Repulse?

A. It was in Mr. Bergmann's apartment.

Q. What occasioned your being in his apartment at that time?

A. My wife and I were there regarding leasing the property.

Q. In other words, you had been to his property for a period of two years endeavoring to lease his premises? A. I had not—— [167]

Q. How many times would you say you had been there?

A. The only time I talked to Mr. Bergmann regarding the leasing of his property was during the month of October, 1941.

Q. '41? A. Yes, that is right.

Q. Well, now, when did this conversation take place respecting the Repulse and the Prince of Wales?

A. As I recall, it was the latter part of October or the first of November.

Q. What year. A. '41.

Q. And you were there to lease his apartment buildings? A. Concerning that, yes.

(Testimony of F. M. Graham.)

Q. And you did not get to make the lease?

A. Yes, we got a copy of the lease drawn up.

Q. Did you consummate the conclusion of the lease? A. No.

Q. Now, you say that was in '41?

A. It was.

Q. What occasioned your going to his apartment in September of 1942?

A. Regarding the condition that is now being presented before this Court.

Q. How did you happen to go down to see Mr. Bergmann?

A. That was my business if I want to go see him. [168]

Q. On that occasion did you endeavor to borrow \$500 from him?

A. I had no occasion to borrow money from Bergmann.

Q. I am asking you now if on that occasion it isn't a fact that you requested him to loan you \$500? A. No, absolutely not.

Q. Then what are the circumstances that took you to his home in September of 1942?

A. To visit.

Q. To visit? A. Yes, to ask questions.

Q. You knew the papers and proceedings had been instigated against him to take away his citizenship papers? A. That is right.

Q. And you felt sympathetic toward him, did you? A. Yes and no.

Q. What do you mean by that?

(Testimony of F. M. Graham.)

A. Personally, as far as Mr. Bergmann is concerned, I admire his knowledge of world affairs. As to his American citizenship, I think it is absolutely——

Mr. Howser: We are not interested in what you think and object to it and ask it be stricken.

Mr. Dean: Just a moment, your Honor. He has asked for an expression of sympathy.

The Witness: He asked what I thought of him.

The Court: I think the answer so far as given may stand, [169] but anything further should not be stated. Ultimately we have to judge him by his acts and not by the impressions he may have created by his acts on others.

Q. By Mr. Howser: Mr. Graham, did you go down there to ask Mr. Bergman certain questions in September of 1942?

A. I went there to visit.

Q. Did you go to ask him certain questions?

A. I answered that.

Mr. Howser: Your Honor, I don't believe the witness did answer it at all.

The Court: You may answer.

The Witness: Yes, I went there to ask him certain questions.

Q. By Mr. Howser: Who sent you there to ask these questions? A. Nobody.

Q. At that time Mr. Bergmann did tell you the reason he wanted to return to Germany was because he had an elderly mother there and he wanted to see her?

(Testimony of F. M. Graham.)

A. He asked me if I would testify to that.

Q. Had he previously told you that he wanted to return to Germany? A. Yes.

Q. And isn't it a fact that he told you the reason he wanted to go there was to see his elderly mother?

A. The only time I ever heard Mr. Bergmann mention [170] his mother, as I told you, was at one particular time when he asked if I would testify in his behalf, at his request.

Q. And he also told you that he had been an officer in the German army during the first World War? A. Yes.

Q. And he told you other things about his service down in the Dardanelles. Is that correct?

A. No. He spoke very little of his service in the Dardanelles; just the location and the rank he held in the army.

Q. Did he tell you he graduated from the university in Germany? A. He did.

Q. Did he tell you what degree he received?

A. He did not.

Q. Now, I also understood that you went down during the month of August, 1942, to discuss this present case with him. A. That is correct.

Q. In other words, after you determined that Mr. Bergmann was in this difficulty you went on two occasions to his apartment to visit and discuss the case with him?

A. I might have went there on three occasions. I don't remember. Two or three or maybe four.

(Testimony of F. M. Graham.)

Q. Two or three or four times you went back to his home to discuss this case with him? [171]

A. That is right.

Q. Now, you say you have told us the most important part of these conversations. Can you please tell us what other conversations you had with him in August of 1942; what was said?

A. I don't remember everything that was said.

Q. The only thing that you do remember is what you termed "The most important part"?

A. That is right.

Q. I will ask you if it isn't a fact, Mr. Graham—excuse me, your Honor.

(Conference between counsel.)

I will ask you whether or not on this occasion in August you endeavored to obtain a loan from Mr. Bergmann.

A. May I ask you a question, Mr. Howser?

The Court: No, no. You have answered that. The witness has already answered it.

The Witness: I have never tried to borrow any amount of money from Mr. Bergmann at no time.

Q. By Mr. Howser: You had occasion to be in his apartment where he lives, you say?

A. That is right.

Q. Can you describe it for us?

A. Yes. It is a single apartment with a living room, a kitchen, a bathroom and a clothes closet.

Q. Has he got a rug on the floor? [172]

A. No.

(Testimony of F. M. Graham.)

Q. Does he sit on a box or a chair when he eats?

A. He sits on a home made bench or stool affair.

Q. Can you describe what he sleeps on?

A. He sleeps on a pull-out bed.

Q. Now, you have had occasion to be in his apartment approximately how many times?

A. All told I expect I have been in his apartment at least a dozen times.

Q. Have you ever seen any German literature, magazines or newspapers in his apartment?

A. I have not.

Q. Have you ever gone to him for advice on investments in the stock market.

A. He voluntarily gave me advice. I didn't ask for it.

Q. Did you ever discuss with him the investment of your money in the stock market?

A. Yes.

Q. And you told him you had \$6,000 that you wanted to invest?

A. I didn't say I wanted to invest it. He asked me how much I could invest.

Q. And you said \$6,000?

A. Approximately.

Q. Do you recall what he told you to invest it in?

A. Yes, in Pullman stock and Standard of New Jersey. [173]

The Court: When was the date of this advice?

The Witness: I don't remember the date of the advice, your Honor.

The Court: Well, I mean the year.

(Testimony of F. M. Graham.)

The Witness: That was in '41.

The Court: All right.

Q. By Mr. Howser: Now, I understand that you had a conversation with him in December of 1941 and he informed you at that time he was going to take a trip.

A. That was the reason for making this lease, yes.

Q. And he was going to Hawaii, to South America; take a trip; isn't that right?

A. That is right.

Q. And he was getting a crew of scientists and archeologists and other men together to go on this trip with him?

A. His crew was coming from South America. He was to go to that point alone, but there he would pick up his crew.

Q. You knew at that time that he professed to be an archeologist of some note, did you not?

A. Yes, sir.

Q. Was there any reference made that he was going to go to Germany in this boat?

A. Eventually.

Q. Eventually? [174] A. Yes.

Q. What did he say?

A. He said he would first go to Hawaii, from there he would go to South America where he would obtain this boat and crew, and go from there to the South Sea Islands, eventually into Africa and finally on to Germany.

(Testimony of F. M. Graham.)

Q. What did he tell you he was going to do in the South Sea Islands, if anything?

A. Go on a trip regarding scientific archeology.

Q. Then what?

A. I don't know what he was going to do after that.

Q. What he was going to do after that you don't know? A. I do not.

Q. I believe you testified that Mr. Bergmann said our Government is run by racketeers and Roosevelt has sold the people out by the Lend-Lease.

A. That is right.

Q. Did you have occasion to hear any discussion or read in the papers any discussion about the Lend-Lease issue as it came up before Congress?

Mr. Dean: I object to that as being immaterial, your Honor.

The Court: Well, go ahead. You may answer.

The Witness: I have read the papers and did read the papers regarding that; but I am in no position to talk [175] intelligently on the subject.

Q. By Mr. Howser: You know and did know at that time that there was a great deal of opposition in this country to the Lend-Lease?

A. Yes, sir.

Q. Now, the first conversation that you had with the defendant, Mr. Bergmann, was during the year 1940? A. Yes, sir.

Q. And you and a fellow officer were patrolling the harbor area in a radio car, were you?

A. That is right.

(Testimony of F. M. Graham.)

Q. You merely pulled up and stopped and started a conversation with Mr. Bergmann?

A. That is right.

Q. Just to pass the time away?

A. That is right.

Q. Did you have any previous knowledge of Mr. Bergmann or his beliefs at that time?

A. The man I worked with had known Mr. Bergmann a couple of years before I did and he told me a great many things about him, about his knowledge of world affairs and what was going on in the world. In fact, he admired his ability for knowing what the condition of the world was, and for that reason he drove around and introduced me to Mr. Bergmann. That is how the conversation started.

Q. Did he tell you when he pulled up there that you [176] would possibly have a lot of fun talking to this man a little while?

A. Not "fun," no; admiration for the man's knowledge of world events.

Q. When you heard him at that time state that this man Hitler was a great genius, in that particular conversation did he express himself in his belief and as a basis for it that it took a great man to build Germany back from the country it was at the end of the first war?

A. No, he didn't state in that many words, but that is the impression a person would get from the facts of the situation.

Q. In other words, he had great belief in Hitler

(Testimony of F. M. Graham.)

because of his ability to bring Germany back in as a nation? A. That is right.

Mr. Dean: I object to that as calling for a conclusion.

The Court: That is a speech.

Mr. Howser: I will withdraw it, your Honor.

The Court: All right.

Q. By Mr. Howser: Mr. Graham, did you make any report of these circumstances to anybody, referring to the contents of your conversation in 1940?

A. To anybody?

Q. Yes.

A. I might have talked to a number of people about it.

Q. Did you ever file any report on this conversation [177] with the Long Beach police department?

A. I did not.

Q. Did you file with any other law enforcement agency a report on this conversation?

A. I was asked questions regarding it. I didn't file any personal affidavit, no.

Q. When were these questions asked?

A. I don't remember the exact date.

Q. Well, before or after the filing of this proceeding? A. During the month of April.

Q. 1942? A. Yes.

Q. And those questions were asked by the agents of the Federal Bureau of Investigation?

A. Those questions were asked me by Mr. Casey of the FBI.

Q. For the purpose of the record Mr. Casey to

(Testimony of F. M. Graham.)

your knowledge was an agent of the Federal Bureau of Investigation? A. That is right.

Q. And up to that time you did not report to any law enforcement department or elsewhere any of the contents of these conversations?

A. I did not.

Mr. Howser: That is all.

Mr. Dean: Just one question on redirect, your Honor. [178]

Redirect Examination

Q. By Mr. Dean: Mr. Graham, on cross examination in response to a question by Mr. Howser you stated that Mr. Bergmann said that when he was going to take this trip in his boat to South America that he was going to go to Germany eventually. Is that correct? A. That is right.

Q. Is that the way Mr. Bergmann said it, or did he elaborate in any way?

A. That is the way he said it; that he would eventually land at his home in Germany.

Q. Did you ever have any discussions with any other law enforcement officers, conversations concerning Mr. Bergmann subsequent to your first conversation?

A. Merely conversation; no record was ever made of it.

Q. But you have had conversations with other law enforcement officers? A. I have.

Mr. Dean: That is all.

Mr. Howser: May I ask one further question?

The Court: All right.

(Testimony of F. M. Graham.)

Recross Examination

Q. By Mr. Howser: Mr. Graham, you say that Mr. Bergmann told you that he would eventually, upon the conclusion of this scientific trip, go to Germany? [179]

A. That is right.

Q. Did he at that time tell you the purpose of going to Germany?

A. No, he did not.

Mr. Howser: That is all.

Mr. Dean: That is all.

The Court: All right.

(Witness excused.)

The Court: And call your next witness.

Mr. Dean: Mr. Vaughn, will you take the stand, please?

The Court: No one seems to be answering to that name. Did he hear you?

Mr. Dean: Is Mr. Vaughn here?

(No response.)

He should be here, your Honor.

The Court: Is he the other officer?

Mr. Dean: No, he is not the other officer.

The Court: All right.

Mr. Dean: Mrs. Thiessen, will you resume the stand?

EMMA V. THIESSEN,

a witness called by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Q. By Mr. Dean: Mrs. Thiessen, you testified during [180] direct examination this morning concerning a conversation you had with Mr. Bergmann. I believe it was the only conversation you ever had with him.

A. I never met him but the one time.

Q. Is there any portion of the conversation which you testified to this morning which you have not related to the Court? A. Yes, there is.

Q. All right. A. When——

Q. Excuse me just a moment.

Mr. Jacobson: May I ask what recalled it to her mind?

The Witness: Pardon me?

The Court: That would be proper cross examination, Mr. Jacobson. She may answer.

The Witness: I asked Mr. Bergmann if he sold the property I was looking at, if he got all that money and he went back to Germany, as he said he intended to do, if they wouldn't confiscate his money. He lit right up and said, "They could do a lot of worse things to me than that."

Q. That is the substance of the conversation?

A. That is all the conversation we had.

Mr. Dean: That is the only additional testimony, your Honor.

(Testimony of Emma V. Thiessen.)

Mr. Jacobson: Just a moment. [181]

Cross Examination

Q. By Mr. Jacobson: What recalled this conversation to you this afternoon? A. What?

Q. What recalled this conversation to you this afternoon?

A. I just got out of a sick bed, and that was the rest of our conversation.

Q. What recalled it to your mind?

A. Just because I knew it.

Q. Well——

A. Nothing recalled it to me, only I just knew I had forgotten part of it.

Q. Did you look at some statement you had previously made?

A. No, I didn't have any statement, no, sir.

Q. Did you talk to somebody who reminded you of it?

A. No, I was at lunch, having my lunch, when I thought about it.

The Court: It just came to you?

The Witness: It just came to me. I just got out of the sick bed. I have the flu and maybe you will catch it.

My husband wanted me to send in word that I couldn't come, but I didn't want to do that.

Q. By Mr. Jacobson: Did Mr. Bergmann elaborate on what would be done? [182]

A. He said—that is all he said, "They could do a lot of worse things than take my money."

(Testimony of Emma V. Thiessen.)

Q. Did he say anything about the fact that he had evaded military service in Germany?

A. He said that he had been in the German army for three years and that he wanted to go back. I testified to that this morning, you will remember.

Q. But he didn't tell you that he had evaded military service?

The Court: Let's not go into that. The only object is to discuss this particular statement.

Q. By Mr. Jacobson: He didn't elaborate on the statement that they could do worse than take his money away from him?

The Witness: Yes, if he went back with his money.

Br. Jacobson: That is all.

Mr. Dean: May I ask one question on redirect, your Honor?

The Court: All right.

Redirect Examination

Q. By Mr. Dean: It is true you brought that omission to my attention?

A. Yes, I did.

Q. I see.

A. I was at lunch and I said to myself that I had forgotten to state one of the most important things that [183] happened.

Mr. Dean: Your Honor, there are two witnesses who have not appeared as yet, and in their absence I would ordinarily call on the FBI agent but his testimony is rather lengthy.

The Court: I think you have made good progress

(Testimony of Emma V. Thiessen.)

today. We kept late hours yesterday and I have no objection to adjourning at this time.

Let's see; in addition to the agent you have how many additional witnesses?

Mr. Dean: I have approximately three other witnesses at the most, possibly only two.

The Court: So you will probably conclude the examination in the morning?

Mr. Dean: Yes, about 11:00 or 11:30.

The Court: All right, we will take an adjournment until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:50 P.M. an adjournment was taken until 10:00 A.M., Wednesday, November 18, 1942.) [184]

Los Angeles, California,
Wednesday, November 18, 1942
10:05 A.M.

The Court: Are there any ex parte matters?

(No response.)

Cause on trial.

Mr. Dean: Mr. Vaughn, will you take the stand?

M. D. VAUGHN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: M. D. Vaughn.

(Testimony of M. D. Vaughn.)

The Clerk: V-a-u-g-h-n?

The Witness: That is right.

Direct Examination

By Mr. Dean:

Q. Mr. Vaughn, where do you live?

A. Long Beach.

Q. What is your occupation?

A. Deputy building inspector.

Q. For the city of Long Beach?

A. Yes, sir.

Q. How long have you lived in Long Beach?

A. 22 years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. Yes, sir. [186]

Q. How long have you been acquainted with him?

A. About 14, 15 years.

Q. Directing your attention to the year 1929 did you have a conversation with Mr. Bergmann relative to the German Army? A. Yes.

Q. Where did that conversation take place?

A. On a construction job that he was having built at that time.

Q. Were just the two of you involved in the conversation that you recall? A. Yes.

Q. Will you tell us what the conversation was?

A. Oh, he states at that time that he had served a time in the German Army prior to or during the last World War and that he had a brother who was a commander in the army of some description. I don't know whether it was the artillery or not, but some part of the German Army.

(Testimony of M. D. Vaughn.)

Q. Subsequent to that time, and directing your attention to a time approximately a year later, did you again have a conversation with Mr. Bergmann?

A. Yes.

Q. Where did that take place?

A. On the building that he was doing some more work on, the same location.

Q. Will you tell us what that conversation was, if you [187] recall it?

A. Well, the conversation at that time, he made the statement that his brother was a commander of a German submarine at that time.

Q. Now, directing your attention to a time approximately a year ago, did you have occasion to have a conversation with Mr. Bergmann?

A. Yes.

Q. Can you fix the time any more definitely than that?

A. Well, it was along about the first of last November.

Q. Where did this conversation take place?

A. In the office of the Building Inspector of the City of Long Beach.

Q. Will you describe for us the circumstances under which you saw Mr. Bergmann at that time?

A. Well, he had some literature that he was passing out, Lindberg and Wheeler literature.

Q. Did you see it yourself? A. Yes, sir.

Q. I see.

A. And that is about the conversation that followed.

(Testimony of M. D. Vaughn.)

Q. Did he approach you?

A. He came up to the counter.

Q. And then the conversation followed. Is that right? [188]

A. That is right.

Q. Now, will you tell us what the conversation was?

A. Well, he predicted the war wouldn't last more than one more year providing the United States stayed out of it.

I asked him why he thought it would end so quickly, and he made the statement that, "We—Hitler will use gas and wind it up quick."

Q. Are those the exact words that he used

A. Yes, sir.

Mr. Dean: I think that is all the direct examination, your Honor.

Cross Examination

By Mr. Howser:

Q. Mr. Vaughn, was there any hesitation between the words "we" and the commencement of the following words "Hitler will use gas"?

A. Well, he said, "We—Hitler will use gas."

Q. Then there was a definite break in his manner of speech between the word "we" and "Hitler"?

A. Well, that is what he said. I can't tell you what the terminology would be. That is the way he said it.

Q. Well, as you have testified, you have put "we," then you have waited some time, and then you have said "Hitler will use gas." Is that the way he did it?

(Testimony of M. D. Vaughn.)

A. He said, "We—Hitler will use gas."

Q. I see. [189]

Now, you say he was passing out literature on Lindbergh and Wheeler. Is that correct?

A. That is right.

Q. What do you mean by that?

A. Little books or pamphlets that were put out at that time.

Q. How many pamphlets did he have?

A. He had one that he gave to Mr. Kennedy and myself to read.

Q. In other words, he didn't have a whole handful or an armful of pamphlets that he was distributing?

A. No, I don't think he did.

Q. He was asking you to read what these particular men were advocating respecting the United States entering the war?

A. Yes.

Q. Do you know whether or not that particular piece of literature you refer to was printed by the Government?

A. I don't recall.

Q. Now, you say you have known Bergmann for 14 or 15 years?

A. Yes, sir.

Q. During that period of time, Mr. Vaughn, do you recall Mr. Bergmann making any statement other than those that you have given that might be considered disloyal to this country? [190]

A. No, I do not.

Mr. Howser: That is all.

Mr. Dean: No redirect examination, your Honor.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Haschkae.

J. E. HASCHKAЕ

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: J. E. Haschkae, H-a-s-c-h-k-a-e.

Direct Examination

By Mr. Dean:

Q. Mr. Haschkae, what is your occupation?

A. I am retired at the present time; electrical engineer.

Q. Where do you live?

A. 2015 Lotus Avenue.

Q. Long Beach?

A. Long Beach, California.

Q. How long have you lived in Long Beach?

A. I would say about 15 years now.

Q. Are you acquainted with the defendant, Friedrich Walter Bergmann?

A. I lived almost next door to him for about 12 years. [191]

Q. During the time that you have known him, Mr. Haschkae, have you ever observed him upon seeing him for the first time, or upon leaving his presence do anything unusual?

A. You mean in the form of greeting?

(Testimony of J. E. Haschkae.)

Q. Well, yes, if there was anything unusual in the form of a greeting.

A. Maybe about half the time when I met him, which was every three or four days, he would raise his left hand and say, "Heil Hitler."

Q. How many times would you say you have seen him do that?

A. Oh, perhaps in the last 10 or 12 years maybe a dozen times.

Q. Directing your attention to a time approximately five or six years ago, Mr. Haschkae, did you have a conversation with Mr. Bergmann at the time United States sailors were drilling in Long Beach?

A. Yes, I did.

Q. Can you fix the date of the conversation any more definitely than five or six years ago?

A. No, I don't believe I can. It may be five or six or even seven years ago when the Navy boys landed on the beach in front of Mr. Bergman's place, and across the street from his place done some drilling in the sand, jumped behind buildings and sand dunes as though they were invading.

[192]

Q. They were holding maneuvers, in other words?

A. Yes.

Q. You say this occurred during 1936 or 1937?

A. I would think so, some place around there.

Q. Will you tell us what conversation you had with Mr. Bergmann at that time?

A. It seems like all the neighbors were interested in watching the sailor boys drill on the beach

(Testimony of J. E. Haschkae.)

and, of course, I came out too; and when I got to his premises, he was prancing around in his spacious yard with his face very much red and excited, and he took his fist and pounded it upon the fence post of one of his fences and said, "America will be sorry if she interferes with Germany."

Q. Is that the substance of the conversation?

A. I think that is about what it amounted to. Then he pranced away. He was very much afraid he was going to get shot, it looked to me.

Q. Directing your attention to a time during this year, some three or four weeks ago, Mr. Haschkae, did you have occasion to see Mr. Bergmann again?

A. He called on me at my house. He wanted me to testify for him in this case.

Q. Excuse me just a moment. I want you to tell us, if you can, what he said. I assume that is what you are doing. If you are not, will you tell us just what he said to you?

A. He said that he got it from several neighbors that [193] I had made remarks about him being very close-fisted and very stingy; that he swept up coffee off the floor of the roasting place; that he bought five and ten cents worth of fish and five and ten cents worth of meat at a time.

He said he could win this case because it is a peculiar characteristic about him to be very stingy, that that was the way he was born and raised, and that that is all right.

So I brought up several things which happened;

(Testimony of J. E. Haschkae.)

I told him I couldn't swear to all of that, that I would have to add something to it, about the "Heil Hitler" and about America interfering with Germany's business, and so forth.

He cried two or three different times during the conversation and was very much disgusted with me.

Q. Did you receive or did he hand you anything during the course of this conversation?

A. No. I met him later on after he called at my house. He called me on the 'phone and made an appointment to meet him downtown in the park. He had a list of things written out which he read off to me, and I said, "Well, that is all right as far as it goes. You are stingy and close-fisted, but," I said,—well, "sort of miserly."

Q. Excuse me just a moment. Do you remember what was on the list that he gave you?

A. Well, he had about 10 or 15 questions written out there, or answers, rather.

Q. Do you recall what they were? [194]

A. Well, every one was pertaining to the fact that he was stingy, which he admitted was a peculiar characteristic of himself.

Q. Was that the substance of the conversation you had with him?

A. Yes, it was.

Q. Have you seen him since that time?

A. No, I never saw him since that time.

Q. Now, you said, I believe, that once he asked you to testify, that you brought up certain things that had happened.

A. Yes.

Q. Is that correct?

A. Yes.

(Testimony of J. E. Haschkae.)

Q. That you reminded him of certain things that had happened? A. Yes.

Q. What were those things? Will you tell us what you reminded him of?

A. The "Heil Hitler" was one of them and America interfering with Germany in this war; and I said, "You know, you told me one time that you sent your money to Canada for protection; that you didn't want to put it in the bank here," and I said, "Canada may get in the war too, and then what?"

Well, after a while Canada did get into the war, and I asked him what he was doing with his money, and he said he was [195] sending it to Australia. I asked him if he didn't know that Australia was in the war, and he didn't answer, and I never asked him since.

Mr. Jacobson: I move to strike that out.

The Court: That may be stricken.

Mr. Dean: That is all the direct examination.

Cross Examination

By Mr. Jacobson:

Q. With respect to the Lincoln Park conversation— A. A little louder, please.

Q. With respect to the Lincoln Park conversation, did anything come up about a sale of your property?

A. Yes. I asked him if he didn't want to invest some money before he went away to the evacuation camp and buy my property; that I would sell it to him for \$8,000.

(Testimony of J. E. Haschkae.)

He said, "At this time I couldn't be interested in buying any property."

Q. Now, let me understand you. Did you say to him, that, before he went to an evacuation camp, would he like to buy your property?

A. I said that.

Q. You said that to him? A. Yes.

Q. Was your opinion at that time then that he was going to go to an evacuation camp?

Mr. Dean: I object to that as being irrelevant, calling [196] for a conclusion of the witness.

The Court: Objection overruled. You may ask what brought it on. Go ahead. You may answer.

The Witness: I said to him, "You have got a lot of property; maybe you've got a lot of money too. Don't you want to buy my property? I will sell it to you for \$8,000."

He said, "At this time with my troubles I couldn't buy any property."

Q. By Mr. Jacobson: Did you say anything about him going to an evacuation camp?

A. Yes. I mentioned that; that it might be all right because he could take care of the property better than he could a bunch of money.

Q. What was the first price you offered him the property at?

A. Oh, maybe 10 years ago I may have offered him the property for \$15,000.

Q. I mean the night of this conversation.

A. \$8,000.

(Testimony of J. E. Haschkae.)

Q. Then did you later reduce the offer to \$7500; the night, I mean, of this same conversation in Lincoln Park?

A. I may have said that I would take \$7500 all cash for it. That may be true.

Q. Now, did you come down eventually to \$6,000 cash?

A. Not to my memory. I don't think so, no.

Q. He refused the property at any price that you [197] offered? A. That is right.

Q. Did you tell him that you could do him a lot of good in this case? A. No.

Q. Did you tell him to get in touch with you later if he thought it over and reconsidered the matter?

A. No, no; he just called me up and made an appointment to meet me downtown.

Q. Did you tell him you would testify for him if he bought the property?

A. No, I did not.

Mr. Jacobson: That is all.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Barber, will you take the stand?

BRUCE G. BARBER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Bruce G. Barber. [198]

Direct Examination

By Mr. Dean:

Q. Mr. Barber, what is your occupation?

A. I am a district law officer in the Immigration and Naturalization Service, Los Angeles.

Q. How long have you been so associated, Mr. Barber?

A. I have been in the service 17 years.

Q. The Immigration and Naturalization Service? A. Yes, sir.

Q. Mr. Barber, your title is district law officer. Is that correct? A. Yes, sir.

Q. And prior to the assumption of your duties as district law officer, has it been your duty to take statements from individuals who petition for citizenship in the United States?

A. Yes, it has.

Q. In that connection did you take a statement from the defendant in this case, Friedrich Walter Bergmann? A. Yes, I did.

Q. Do you recall approximately when that statement was taken?

A. Yes, it was in November of 1936.

Q. Where was the statement taken, Mr. Barber?

(Testimony of Bruce G. Barber.)

A. In the Immigration and Naturalization Service office in Los Angeles. [199]

Mr. Jacobson: Will you give me the date again, please?

The Witness: November, 1936.

Q. By Mr. Dean: What were the circumstances surrounding the hearing or the interview you had at that time?

A. At that time Mr. Bergmann appeared with his two witnesses to file his petition for naturalization, and I was the naturalization examiner who took the preliminary statement from him, preliminary to his filing his petition.

Q. You mentioned the term "application." Was that application made on some sort of a document or was it merely verbal?

A. The petitioner, or Mr. Bergmann, had filled out a form which is a preliminary petition for naturalization, and that had been submitted to the Service. At the time he came to file his petition, his answers given on that form which are numbered questions were checked by me under oath.

Mr. Dean: I see.

Your Honor, as soon as counsel has had time to examine the document I will present it to Mr. Barber.

Mr. Howser: Thank you, counsel. (Passing document to Mr. Dean).

Q. By Mr. Dean: Mr. Barber, I show you what appears to be a preliminary form or petition for naturalization, No. 23-29—and the paper is torn so

(Testimony of Bruce G. Barber.)

that I can't see the next digit; the finishing two digits being 24 with a stamp on it bearing the date of September 5, 1936, "Received District Office [200] Los Angeles," and ask you if you have seen that document before? A. Yes, I have.

Q. Is this the document that you saw at the time Mr. Bergmann appeared for an interview at your office? A. Yes, that is correct.

Q. With respect to the writing in black ink on the first and second pages of the document, do you know in whose handwriting that is?

Mr. Jacobson: Do you want a stipulation, Mr. Dean? That is the petition signed by my client. He said that is the one he signed and filled out.

Unless there is some endorsement by the Government, of course——

Mr. Dean: I think I will bring that out in the course of this questioning. Thank you, Mr. Jacobson.

Mr. Jacobson: All right.

Q. By Mr. Dean: With reference to the handwriting on the first two pages, is that in your handwriting?

A. The corrections made are in my handwriting.

Q. Now, directing your attention to Question No. 26 which reads, "If necessary, are you willing to take up arms in defense of this country?" Was the answer to that question given in your presence on this occasion?

(Testimony of Bruce G. Barber.)

A. Yes, Mr. Bergmann was asked this question over again. [201]

Q. By you? A. By me.

Q. I see. A. And he——

Q. Why was he asked the question over again?

A. Because there appeared some entry there which looked to be “No” that had been crossed out before the form had been sent in to our office.

Q. In other words, it appeared to you that the question had been answered “No.” Is that right?

A. Yes, that is right.

Q. What followed subsequent to the discovery of “No” in response to that question?

A. When I asked Mr. Bergman the question, I asked him whether he had any objections to bearing arms in defense of the United States, and he said, “No,” he didn’t; but he wouldn’t bear arms in an attack upon Germany.

I asked him if he could not take the oath unqualifiedly, and he said he couldn’t. He said he wanted that qualification put in there, and I wrote the qualification in here in pen and ink.

Q. His qualification?

A. Yes. That follows his answer to Question No. 26.

Q. Yes.

The Court: May I see that?

The Witness: Certainly. (Passing document to the [202] Court.)

The Court: All right.

(Testimony of Bruce G. Barber.)

Mr. Dean: Will you read the last answer, please?

The Court: You are going to offer that as it is? Have you a photostat of it, Mr. Dean?

Mr. Dean: I don't have a photostatic copy, no. Do you, Mr. Barber?

The Court: This is very important.

Mr. Dean: May I ask leave to have it photostated after it is offered?

The Court: Yes. This is very important because it is in the handwriting of the person.

Mr. Dean: With leave of the Court, I will have this photostated.

The Court: You had better mark it as an exhibit and withdraw it on substitution of a copy.

Q. By Mr. Dean: Mr. Barber, with reference to that, will you continue to explain what transpired subsequent to your questioning of Mr. Bergmann?

A. There are several questions following Question No. 26, and by the time I had checked off the rest of the questions, Mr. Bergmann then said he wanted to withdraw the statement that he would not be willing to take up arms in an attack upon Germany, so I ran a line through that crossing it out.

Q. Where does that line appear on this document? [203]

A. Following Question No. 26.

Q. And above the word "No"?

A. And above the word "No" following the next sub-question under No. 26.

(Testimony of Bruce G. Barber.)

Q. Did you have any further conversation concerning that question, of that inquiry?

A. Yes, I had quite a little conversation with him at that time.

Q. Do you recall what the conversation was at that time?

A. I asked him whether or not his objections to bearing arms was based upon a religious idea, or whether it was his love of Germany.

Q. Did he reply to that?

A. He said that it would be hard for him to bear arms in an attack upon Germany, but that his objection was not because of any religious scruples.

Mr. Dean: Mr. Jacobson and Mr. Howser, I understand you are willing to stipulate the signature on this document is that of the defendant, Friedrich Walter Bergmann. Is that correct?

Mr. Jacobson: So stipulated.

Mr. Dean: I offer this as Government's first exhibit, your Honor.

The Clerk: Exhibit 1.

The Court: It may be received. [204]

(The petition referred to was received in evidence and marked Plaintiff's Exhibit No. 1.)

N

1130

① Friedrich ~~Walter~~ Bergmann

No. 23-29124

STATEMENT OF FACTS TO BE USED IN FILING MY PETITION FOR NATURALIZATION

My name is (Mr.) Friedrich (Walter) Bergmann1. My present residence is 1255 W. Seaside Long Beach Los Angeles Calif.2. My occupation is Archaeologist3. I was born in Walden, Germany on March 18, 1893 My race is German4. I declared my intention to become a citizen (first paper) on February 2nd 19345. I am not married. The name of my wife or husband is _____

We were married on _____ at _____

She or he was born at _____

I arrived in the United States at _____ on _____ for permanent

residence, and now resides at _____ with _____ naturalized

on _____ and certificate No. _____ issued.

I have no children, whose names, dates and places of birth, and places of residence are as follows:

Name

DATE AND PLACE OF BIRTH

NOW RESIDING AT

6. My last foreign residence was Barrotona British Cark IsldsThe place where I took the ship which landed me in the United States was San Francisco Calif.7. The foreign country of which I am now a subject or citizen is Germany8. I can fluently speak English.9. I have resided continuously in the United States since July 18, 192210. I have resided continuously in the county where I now live since April 22, 192211. I have never previously made petition for naturalization (second paper). If so, it was No. _____, made in

the _____ Court at _____

and was not granted because _____

12. If you wish to have your name changed, give full name you desire Friedrich Walter Bergmann

(Give names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination

to file your petition. These witnesses must have personal knowledge of your residence in the county at least, and of your character

and other qualifications. A foreign-born witness must bring proof of his citizenship.)

(1st) Doctor John W. Eichel Physicianresiding at 255 East Ocean Boulevard Long Beach(2d) Thomas W. Rankin Intendantresiding at 953 Park Avenue Long BeachI first met this witness on July 1924

I certify that the above statement of facts has been read by me and that the statement is true to the best of my knowledge and

belief. 10-1-34 in J.F.

NOTE: Have you inclosed (if required) —

✓ DECLARATION OF INTENTION.

✓ IMMIGRANT IDENTIFICATION CARD.

✓ TWO PHOTOGRAPHS OF YOURSELF.

" 10-1-34 MONEY ORDER FOR \$2.50.

and 3 References.

Friedrich Walter Bergmann

(Signature of applicant)

1255 W. Seaside - Long Beach.

(Address of a bank applicant reserve fund)

INSTRUCTIONS TO THE APPLICANT

Pages 1, 2, and 3 of this form must be completely filled out (preferably on a typewriter)

Immigrant Identification Card.—Every alien who entered the United States for permanent residence on the basis of an immigrant visa on or after July 1, 1928, should be in possession of an Immigrant Identification card bearing a number in red ink. If you arrived on or after the above date, you must attach such card to this application, inserting the number thereof in the appropriate blank space on the first page of this form. Your identification card will be returned to you, after it has served its purpose. If you arrived on or after July 1, 1928, and you do not have an Immigrant Identification card, either because it is lost or destroyed, or you did not receive such card, you should state the facts in Statement No. 12 on the first page.

Photographs.—You are required to send with this application two photographs of yourself taken within thirty days of the date of this application. These photographs must be 2 by 2 inches in size, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. Snapshots, group, or full-length portraits will not be accepted. Both of these photographs must be signed by you on the margin and not on the face or the clothing.

Money Order.—If you are not within one of the below classifications you must secure a money order in the sum of \$2.50, payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C." This money order, which is in payment for the issuance of a certificate of your arrival in the United States, must be attached to this application when you send or take it to the Immigration and Naturalization office at the address given on the first page of this form. You are not required to send a money order if (1) your arrival occurred on or before June 29, 1906; or (2) your declaration of intention (first paper) is dated on or after July 1, 1929; or (3) you have heretofore filed a petition for naturalization after July 1, 1929; or (4) you are otherwise exempted by law from the requirement for a certificate of arrival.

Date of Your Arrival.—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, and you can not secure this information by consulting your family or friends who came over with you, give the facts of your arrival as you remember them in the appropriate blank spaces on the first page of this form. If you have a passport, ship's card, or baggage labels, they may help you to answer these questions.

Race and Nationality.—In furnishing information as to your race in Statement No. 3, page 3, "race" is to be determined from the original stock or blood of your ancestors and the language you speak, as distinguished from "nationality," which means the country of which you are a citizen or subject. For instance, a person may be of French blood or stock but owe allegiance to Great Britain. In that case "race" would be French and "nationality" British. For your information there follows a partial list of races or peoples:

African (black).	Filipino.	Latvian.	Scotch.
Albanian.	Finnish.	Lithuanian.	Servian.
Armenian.	Plenish.	Magyar.	Slovak.
Belgian.	French.	Mexican.	Slovenian.
Bohemian.	German.	Montenegrin.	Spanish.
Bosnian.	Greek.	Moravian.	Spanish American.
Bulgarian.	Hebrew.	Pacific Islander.	Swiss.
Chinese.	Hercegovinian.	Polish.	Syrian.
Croatian.	Irish.	Portuguese.	Turkish.
Cuban.	Italian (North).	Rumanian.	Ukrainian.
Dalmatian.	Italian (South).	Russian.	Welsh.
Dutch.	Japanese.	Ruthenian (Russenik).	West Indian (other than
East Indian.	Korean.	Scandinavian (Norwegian).	Cuban).
English.		Danes, and Swedes.	

The term "Cuban" refers to the Cuban people (not Negroes); "West Indian" refers to the people of the West Indies other than either Cubans or Negroes; "African (black)" refers to the African Negro, whether coming from Cuba or other islands of the West Indies, North or South America, Europe, or Africa. Any alien with admixture of blood of the African Negro will be classified under this heading. "Italian (North)" refers to people who are native to the basin of the River Po in northern Italy (i. e., Departments of Piedmont, Lombardy, Venetia, and Emilia) and their descendants, regardless of place of last foreign residence. "Italian (South)" refers to people who are native to that portion of Italy south of the basin of the River Po (i. e., Departments of Liguria, Tuscany, the Marches, Umbria, Rome, the Abruzzi and Molise, Campania, Apulia, Basilicata, Calabria, Sicily, and Sardinia) and their descendants, regardless of place of last foreign residence.

RESULT OF EXAMINATION TO THE APPLICANT—Do not write on these lines

Examiner

Form A-2914
U. S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

APPLICATION FOR A CERTIFICATE OF ARRIVAL
and
PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

No. 23-29.24

For use in searching records of arrival:

RECORDS EXAMINED

RECORD FOUND

Card Index _____
Index books _____
Manifests _____

Place _____
Name _____
Date _____
Manner _____

Use Form 100-1m in issuing certificate of arrival on this application

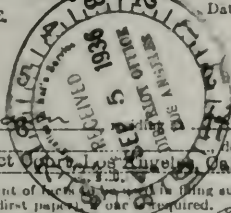
TO THE APPLICANT: Do not write above this line. Read carefully and follow the instructions on last page hereof.

Take or mail this application and your money order to

Date August 28th, 1936

IMMIGRATION AND NATURALIZATION SERVICE,

Post Office Building,
LOS ANGELES, CALIF.



I, Friedrich Walter Bergmann, residing at 55 W. Seaside
Long Beach, U. S. District Court, Southern District of California, desire to file petition for naturalization in the
in accordance with
the naturalization law. I submit herewith a statement of facts in support of filing such petition, two photographs of me, each of
which I have signed, and my declaration of intention (first paper) and one required, and 3 official references.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must
secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose
money order No. _____ in the sum of \$2.50 made payable to the order of the "Commissioner of Immigration
and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States at Eastport, Idaho
under the name of Friedrich Walter Bergmann, on July, 13th, 1922
on the vessel Via Canadian Pacific Railway

Additional facts to aid in locating a record of my arrival:

- I have never used another name in this country than that given above. (If so) It was _____
I used that name because _____
- The full name of the person shown on my steamship ticket was Friedrich Walter Bergmann, Feb 11 1911
- I was born in Walden, Saxony, Germany, on March, Sixth, 1893
- My father's full name is/was Karl Wilhelm August Bergmann
- My mother's maiden name was Elma Adele Drehermann
- (If a married woman) My maiden name was _____
- My last foreign residence was Rorotonga, British Cook Is., as indentured No. 896355 April 28 1915
- The place where I took the ship _____ which landed me in the United States was San Francisco, Calif.
- The ticket on which I came to this country was bought at San Francisco, Calif.
- (If arrival by ship) Name of steamship line was Union S.S. Co. of New Zealand
first, second, or third cabin third I arrived as a passenger, stowaway, seaman, member of crew, or
otherwise as a passenger
- I traveled on (an Immigration visa, a passport, or permit to reenter) Re-entry permit, as stated above #7
- My original Immigrant Identification Card No. 519325 is hereto attached. If not herewith, it is because _____
- I paid \$ 8.00 head tax at U.S. Consulate Niunijeg, Monte Carlo, February 14 1922
- I was last examined by United States immigration officers at Eastport, Idaho
- (If not examined, state why, and give the circumstances of your entry) _____
- The person in the United States to whom I was coming was my brother, Karl Bergmann, Seattle, Wash.
- The place in the United States to which I was going was Spokane, Wash.
- The names of some of the passengers or other persons I traveled with are int at hand - I travel alone

N 11130
① Friedrich Walter Bergmann No. 13 29124

STATEMENT OF FACTS TO BE USED IN FILING MY PETITION FOR NATURALIZATION

My name is Mr. Friedrich (Walter) Bergmann
(Full true name, without abbreviation, or any other name which has been used, must appear here)

1. My present residence is 1255 W. Seaside Long Beach Los Angeles Calif.
(Household and street) (City or town) (County) (State)

2. My occupation is Archaeologist
(Occupation)

3. I was born in Walden, Schumacher, Germany March 18, 1893 My race is Gorman
(City or town) (County) (State) (Last page of)

4. I declared my intention to become a citizen (first paper) on February 2nd 1934
In the U.S. District Court of Southern District of C. at Los Angeles
(Court) (City or town) (County) (State)

5. I am not married. The name of my wife or husband is _____
We were married on _____ at _____
(Month) (Day) (Year) (City or town) (County) (State)

She or he was born at _____
(City or town) (County) (State)

arrived in the United States at _____ on _____ for permanent residence, and now resides at _____
(City or town) (County) (State) (Month) (Day) (Year) (City or town) (County) (State)

on _____ at _____ issued.
(Month) (Day) (Year) (City or town) (County) (State)

I have no children, whose names, dates and places of birth, and places of residence are as follows:

NAME	DATE AND PLACE OF BIRTH	NOW RESIDING AT
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. My last foreign residence was Ravenna, British Columbia
(City or town) (County) (State)

The place where I took the ship Canada which landed me in the United States was San Francisco Calif.
(City or town) (County) (State)

7. The foreign country of which I am now a subject or citizen is Germany
(Country)

8. I can fluently speak English.
(Degree of fluency)

9. I have resided continuously in the United States since July 18, 1922 (continuous residence since 19, 1922)
(Date) (Month) (Day) (Year)

10. I have resided continuously in the county where I now live since March 22 April 1922
(Date) (Month) (Day) (Year)

11. I have never previously made petition for naturalization (second paper). If so, it was No. _____, made in the _____ Court at _____
(Name of court) (City or town) (County) (State)

and was not granted because _____

(If you wish to have your name changed, give full name you desire. Friedrich Walter Bergmann)

(Give names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination to file your petition. These witnesses must have personal knowledge of your residence in the county at least, and of your character and other qualifications. A foreign-born witness must bring proof of his citizenship.)

(1st) Doctor John W. Eard - Physician
residing at 255 East Ocean Boulevard
I first met this witness on March 1928
(Name) (Occupation) (Address) (Date)

(2d) Thomas White Rankin - Intending Merchant
residing at 953 Park Avenue Long Beach
I first met this witness on July 1924
(Name) (Occupation) (Address) (Date)

I certify that the above statement of facts has been read by me and that the statement is true to the best of my knowledge and belief.
10-1-31 in H.A.

NOTE: Have you inclosed (if required) —
✓ DECLARATION OF INTENTION.
✓ IMMIGRANT IDENTIFICATION CARD.
✓ TWO PHOTOGRAPHS OF YOURSELF.
✓ MONEY ORDER FOR \$2.50.
and 3 References.

Friedrich Walter Bergmann
(Signature of applicant)
1255 W. Seaside Long Beach
(Address at which applicant resides now)

(Testimony of Bruce G. Barber.)

Mr. Dean: That is all the direct examination.

Cross Examination

By Mr. Jacobson: .

Q. Were there any subsequent interviews between yourself and Mr. Bergmann in connection with his request for naturalization?

A. No, there were not; not that I recall.

Q. Now, after you had made this examination—I suppose that is the last one before it goes to court, is it?

A. After the form is checked, after the form was checked in this case, then in all cases at that time the preliminary petition form is then given to a stenographer who writes up the information from that form which goes into the petition. That is filed with the Clerk of the Court, and that is the last act that would take place prior to naturalization so far as I was concerned.

Q. Now, is all that information accessible to the United States Attorney and the Court when they pass upon the petition?

A. The Act of Congress provides that the Court may designate an officer to act for the Court in passing upon the petition for naturalization.

The Court: I can settle that by telling you ordinarily we do not see that application at all unless there is some [205] question. The way things are done in this Court, Mr. Barber and others are designated as examiners, and they do all the preliminary work. If they are satisfied that the re-

(Testimony of Bruce G. Barber.)

quirements of the law have been proven, they come into court and recommend.

If a question arises, then they put them on what they call the contested docket. They have no right to reject or admit. They merely recommend. So unless this was put on the rejected docket, which is brought up in open court before the judge who hears naturalization, we never would see this document. So the judge who passed on this naturalization, unless Mr. Barber or somebody else put this on the rejected docket, never saw it.

Mr. Jacobson: That is what I have been trying to find out, your Honor.

The Court: I was going to ask, myself—because I know how it is worked here—why it wasn't put on the questionable docket.

The Witness: I would be very glad to do that, your Honor.

The Court: I wish you would do that because I have had cases which are less borderline than this one brought up before me, and so have the other judges.

The Witness: In reading the MacIntosh decision which we did at that time and also the Bland decision, which are cases involving conscientious objectors, we could see nothing [206] in those two cases which would show this man was unable at that time to take the oath unqualifiedly. The matter of passing upon whether or not the case should be submitted to the Court is done by the designated officer who at that time was Mr. Terrill.

(Testimony of Bruce G. Barber.)

Q. By Mr. Jacobson: Pardon me. Will you spell that? A. T-e-r-r-i-l-l.

And the reason I remember this case is the discussions we had about his answer in that connection.

Q. You did discuss that with this Mr. Terrill?

A. Yes.

The Court: You understand under the MacIntosh case, the Schwimmer case and the Bland case, refusal to bear arms for any reason, even for conscientious scruples, is a ground for denial of citizenship notwithstanding the fact that a native-born may refuse to bear arms. In other words, what those cases taught—in the case of Schwimmer, she was opposed to bearing arms because of her economic belief, and although she was a middle-aged woman the Court held she couldn't take the oath.

In the MacIntosh case, Dr. MacIntosh was a theologian and he said he would bear arms only if the United States was attacked, and the Court said that would disqualify him. The Court has since affirmed the petition.

Didn't you think his statement that he refused to bear arms against a particular country did come within that scope? [207]

The Witness: We have had cases here in court in which a petitioner has stated that he refuses to bear arms because of religious beliefs. Then they talk it over with their minister, for instance, and then come back and reconsider it, and then go into court, and at that time would change their

(Testimony of Bruce G. Barber.)

minds and say they could take the oath unqualifiedly. Those facts are known to the court, and the courts have admitted them. The question we were considering in this case was whether or not he had this doubt at one time during the five years prior to naturalization, he lacked the required attachment during the four or five year period; and we decided at that time that probably his love of country was—he didn't want to give up his love of Germany, but that he did convince us that he was willing to take the oath unqualifiedly.

The Court: All right.

Mr. Jacobson: If you will pardon me just a second, I want to look over this petition.

No further questions, Mr. Barber. Thank you.

Mr. Dean: That is all the direct examination.

The Court: May I see the date of that?

(The document referred to was passed to the Court.)

The Court: Where is the date? Is this the date, Mr. Barber, August 28, 1936?

The Witness: No, your Honor. If I can look at the bottom of the page, it is dated right following his signature, [208] November 5, 1936.

The Court: November 5. And what is the date of the certificate of naturalization?

The Witness: That would be more than 90 days at that time.

The Court: Well, at least that much. Let's see; just to have the date, that is all. April 9th.

(Testimony of Bruce G. Barber.)

Mr. Dean: April 9, your Honor, 1937.

The Court: All right.

(Witness excused.)

The Court: Your next witness.

Mr. Dean: Mr. Casey, will you take the stand?

JAMES D. CASEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: James D. Casey, C-a-s-e-y.

Direct Examination

By Mr. Dean:

Q. Mr. Casey, what is your occupation?

A. Special agent with the Federal Bureau of Investigation.

Q. Were you so employed during the months of April and May, 1941? A. I was. [209]

Q. During that period of time did you have occasion to interview the defendant in this case, Friedrich Walter Bergmann?

A. Yes. I believe it was on May 5, 1942, I had the opportunity to talk to Mr. Bergmann at his residence in Long Beach.

Q. Will you tell us briefly what transpired during that interview?

A. Well, at the time of this interview we first questioned Mr. Bergmann about his background.

(Testimony of James D. Casey.)

Q. Excuse me. You say "we." Was someone else with you?

A. Yes, I was accompanied by another agent from the Los Angeles office, Mr. Gibbons, and we questioned Mr. Bergmann about his background in Germany, where he came from, who his parents were, and when he came to this country.

In the course of the conversation and questioning once in a while he would get off from the direct answers to our questions and I remember distinctly on a few occasions he made the remark, "Germany! We are a great nation." And on another occasion he said, "I am proud I am a German."

Q. Now, it is true, is it not, Mr. Casey, that a signed statement was taken from Mr. Bergmann at that time? A. That is true.

Q. And contained in that statement were the statements which have been given by the defendant to you during the [210] course of the interview?

A. They contained most of the statements. Some of the statements we put in the statement he refused to sign, and scratched them off the statement as it now appears signed.

Q. Now, with reference to the statement that you have attributed to him with respect to "Germany! We are a great nation," was that statement included in the signed statement?

A. No, he wouldn't allow that be included in the statement which he would sign.

Q. Now, during the course of that interview did you have any conversation with Mr. Bergmann rela-

(Testimony of James D. Casey.)

tive to his having been approached by officials of the German government?

A. Yes. At the end of our interview with Mr. Bergmann we questioned him about being approached by any members of the German-American Bund or by any agents of the German government.

Q. Did he respond to that inquiry?

A. At first he said that he had not been approached by members of the bund, and then he later recalled that in January of 1937 he was approached by some German whose name he could not give us, who asked him if he could, because of his position there in Long Beach, observe movements of ships and merchandise in and out of the Long Beach Harbor and report that to him, who was a German connected with the German government.

Q. Did you ask the defendant whether or not he reported that to the authorities or to any government agency? [211]

A. Yes. We asked Mr. Bergmann what he had done about this; if he had attempted to report this to any law enforcement agency, and he said he had not.

Q. Do you recall the date, if any, given to you by Mr. Bergmann on which he was approached by these agents?

A. This he stated was in January of 1937.

Q. January, 1937? A. Yes.

Mr. Dean: Counsel is now reading that statement, your Honor.

Q. Did you have any other conversation with

(Testimony of James D. Casey.)

Mr. Bergmann? Were there any other statements made which were not later included in the written statement, or incorporated in it that you recall?

A. Well, he spoke about qualified limited immigration into this country. He found objection to certain races and did not feel they were on an equal basis to the races from the northern part of Germany which he compared to the Teutonic race he found in Germany.

The Court: That isn't anything. The Congress of the United States has sanctioned that distinction by allowing larger quotas from the blue-eyed northerners than the black-eyed southerners.

The Witness: Well, he wanted to prohibit those from the southern part of Europe.

The Court: Altogether? [212]

The Witness: Yes.

The Court: That would be only one step further. Congress preferred blue-eyed blondes to dark-skinned races and, therefore, they eliminated the Balkans, the Italians, and even the French. They limited their quotas in favor of the Norwegians, Danes and Germans and other blondes.

The Witness: That is right.

Q. By Mr. Dean: Did you have any conversation with him concerning war bonds?

A. Yes. We asked Mr. Bergmann if he had been investing any of his money in war bonds.

Q. Did he reply to that?

A. Yes. He said he had not. We asked him further about it, and he said he planned to in the

(Testimony of James D. Casey.)

future, to make some purchases of these defense bonds.

Q. Did you have any conversation with him concerning voting?

A. Yes. We questioned Mr. Bergmann about his citizenship, and he informed us that he had been naturalized in 1937, but that he had not voted in any election.

The Court: Will you read that answer? I was busy getting something from my secretary and didn't get that last answer.

(The record was read.)

Mr. Jacobson: I am sorry to delay your case, but this is a long statement. [213]

The Court: That is all right.

Mr. Dean: I think we are ready to proceed, your Honor.

The Court: All right.

Q. By Mr. Dean: Mr. Casey, I show you what purports to be a statement signed by Mr. Bergmann dated May 5, 1942, and ask you if you have seen that before.

A. Yes. This is the statement which we took from Mr. Bergmann on May 5, 1942, at his residence.

Q. Now, with reference to the signature that appears on the last page, page 9 of the statement, do you know in whose handwriting that signature is? A. Yes, sir.

Mr. Jacobson: We will stipulate that is the signature of Mr. Bergmann.

(Testimony of James D. Casey.)

Q. By Mr. Dean: That was signed in your presence, was it? A. That is right.

Q. Is there any identification or marking on any of the other pages which was put there by Mr. Bergmann, or is that all?

A. Yes. He has placed his initials besides each correction that appears in this statement.

Q. Will you designate them by page number, please?

A. On pages 3, 5, 6, 7, 8 and 9.

Mr. Dean: I offer this for identification only at this [214] time, your Honor.

The Clerk: 2, for identification.

(The statement referred to was marked as plaintiff's Exhibit No. 2, for identification.)

Mr. Dean: That is all of the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

By Mr. Howser:

Q. Mr. Casey, how long have you been in the F. B. I.?

A. I went on duty with the Federal Bureau of Investigation on October 6, 1941.

Q. Have you had in your experience numerous such cases as this?

A. Will you repeat that, please?

Q. Have you had investigations similar to the one now pending before the court?

A. Yes, I have handled other investigations of this nature.

(Testimony of James D. Casey.)

Q. Now, on May 5, you and Mr. Gibbons went to the home of Mr. Bergmann in Long Beach?

A. That is right.

Q. What time did you arrive there?

A. We arrived there at about noon time.

Q. Do you recall the approximate time when you commenced your investigation and conversation with him? [215]

A. Yes. We started to question him around 1:30, I believe.

Q. Now, where did this questioning take place?

A. It took place in his front room.

Q. Can you describe that for us?

A. Yes. This room is furnished with one bed that was covered up. It looked like a pull-out bed. Several boxes are used for chairs, and there were some papers on the floor.

Q. In your investigation of the apartment did you find any German literature, newspapers, magazines, or pamphlets?

A. Not that I recall.

Q. You have none with you today?

A. No, I haven't.

Q. In order that we may get the picture clearly here, who was asking the questions?

A. Mr. Gibbons and I, but I did most of the questioning.

Q. This statement which you have referred to here which has just been marked for identification, in whose handwriting is that?

A. That is in my handwriting.

Q. In other words, as Mr. Gibbons would ask

(Testimony of James D. Casey.)

the questions and Mr. Bergmann would answer the same you would write them down?

A. No, that isn't true.

Q. How did you do it? [216]

A. We interrogated Mr. Bergmann completely and took notes on the answers he gave to our questions, and on completion of this, we took what he had told us and incorporated it into a statement which he later signed.

Q. Where did you write this incorporated statement?

A. I think we wrote this in our automobile. Mr. Bergmann was busy, had something to do, so we told him rather than stay there and tie up his time while we wrote it out, we went back in the automobile and wrote it.

Q. In other words, you preferred immediately to go in your car and write this statement out while these facts were fresh in your mind?

A. That is correct.

Q. And you have read the statement, have you?

A. Yes, I have.

Q. And it is true and correct?

A. That is the statement he signed. That is true.

Q. I say the statements written down by you are true and correct to the best of your knowledge of the contents of the conversation that took place between you three?

A. That is the conversation that he signed to.

(Testimony of James D. Casey.)

That is the only statement he would give that he would sign.

Q. Yes, but the statements that are in there are statements that he actually made? A. Yes.

Q. And best recalled by you that he would agree upon? [217]

A. Those are the statements he made.

Q. Now, about 4:30 in the afternoon did you have any conversation respecting a search warrant?

A. We asked Mr. Bergmann if he would permit us to search his home.

Q. I will ask you if it isn't a fact that Officer Casey—that you told him you did have a search warrant?

A. No, that is not true. We did not tell him that.

Q. Did Mr. Bergmann object to any investigation of the premises?

A. No. He allowed us to search, but—no, he didn't object.

Q. But you went in and out of each and every apartment?

A. Mr. Gibbons did most of the searching.

Q. Were you present?

A. I was present most of the time. I didn't go everywhere Mr. Gibbons went.

Q. Now, during any of the period of time that you were present do you recall of any conversation concerning the reports that you had received that he was leaving these apartments vacant down there in Long Beach for purposes of dressing rooms for

(Testimony of James D. Casey.)

German agents that were coming in and out of the harbor?

A. No, I don't recall anything about that.

Q. You observed the condition of the apartment? [218] A. Yes.

Q. Can you describe that to us?

A. Well, these apartments were small apartments and were furnished but were unoccupied.

Q. Did they have the appearance of being unoccupied for some time?

A. Well, as I recall, they didn't appear as though they had been occupied recently, within a week or two of that time, at least.

Q. Did you have occasion to hear the lady from Long Beach yesterday testify that the apartments were full of moths and——

A. Yes, I did hear that statement.

Q. Did you see that same condition?

A. I noticed the things were pretty dusty.

The Court: I don't think that is material, gentlemen.

Mr. Howser: All right, your Honor.

The Court: I haven't seen a woman yet who couldn't take exception to the way any man who lives by himself takes care of his establishment. She wouldn't be a woman if she didn't. So what difference does it make? He has a right to shut up his place and not rent it to anybody. There is no requirement, even in war time, that property be rented. If the Government wants the property itself, it condemns it. If a man wants to board his

(Testimony of James D. Casey.)

property up and be a Robinson Crusoe, he has a right to do that even in the city of Long Beach. So I don't [219] think we need to pay much attention to what was done in investigating the other matters except, perhaps—well, strike out “except perhaps.”

Q. By Mr. Howser: Mr. Casey, you say you had some conversation with Mr. Bergmann respecting war bonds? A. That is correct

Q. What did he say?

A. He said that he had been in the market investing money in war bonds, and we questioned him a little more about it, and he said he planned to in the future.

Q. He did say that he had not purchased any?

A. No, I don't recall that. He did purchase one, I believe. He did say he bought one.

Q. You know as a matter of fact that he did tell you, and put it in the report that he had defense bonds, did you not?

A. I think he said he had one.

Mr. Howser: Do you recall, Mr. Jacobson, what page that is on?

Mr. Jacobson: That is on page 7, I think—no, page 9. I am sorry.

Q. By Mr. Howser: Referring to page 9, Mr. Casey, it says, “I have bought about \$1,000 in U. S. defense bonds and plan to buy \$1,000 worth every six months.” He made that statement, did he not?

A. That he bought a \$1,000 bond, as I understand it. [220]

(Testimony of James D. Casey.)

Q. And that he intended to buy \$1,000 worth every six months?

A. "A bond" is the way I recall him making the statement.

Q. You wrote down what he said, didn't you?

A. That is right.

Mr. Howser: Your Honor, I would like to request of the Court, and I understand that the Government is desirous too of having this instrument in evidence, and we would like to ask that the same be accepted in evidence in this case.

Mr. Dean: No objection, your Honor.

The Court: All right.

The Clerk: Mark it Government's Exhibit No. 2.

(The document referred to was received in evidence, and marked as Government's Exhibit No. 2.)

GOVERNMENT'S EXHIBIT No. 2

Long Beach, California

May 5, 1942.

(Approved F. W. B.)

I, Friedrich Walter Bergmann, 1255 W. Seaside, Long Beach, California, make the following statement freely and voluntarily to Special Agents James D. Casey and James V. Gibbons of the Federal Bureau of Investigation. No threats or promises were used against me.

I was born in Walda, Saxony, Germany, March 6, 1893, the son of Theodore Edmund Nicolaus

(Testimony of James D. Casey.)

Bergmann and Flora Adele Bergmann. I was educated in Dresden, Saxony, Germany and completed what was the equivalent of a junior college education. On February 11, 1911, I left Germany from Bremenhaven on the S. S. George Washington. I was accompanied by my older brother, Edmund. My destination was Toronto, Canada. The instant ship first stopped at New York City and I was there for about two days. I arrived in Toronto Canada around March 1, 1911. I was employed by Greeff Bredt and Co., Front St., Toronto as chief accountant for 2 years. In 1913 I went to western Canada, to the city of Edmonton in the province of Alberta where I spent 3 years as a (Approved F. W. B.)

prospector. From there I went to Calgary, in the province of Alberta, Canada, where I was employed for 3½ years as the city salesman for the A. B. Cushing Lumber Co. In 1919 I returned to Edmonton where I was the sales executive for the Edmonton Metal Works Limited and remained there until 1922 except for an intervening period of 12 months when I was in Prince George, British Columbia. On July 11, 1922, I entered the United States at Eastport, Idaho. I received a permit from the U. S. consul at Winnipeg, Canada.

After arriving in the United States, I visited my brother Charles in Spokane, Washington, for about 9 months. After that I went to San Francisco for a few months and then to Long Beach, California. In Long Beach, I have invested my money in the

(Testimony of James D. Casey.)

harbor area. I have been living in Long Beach since 1923. I have lived at the Y. M. C. A. and for 7 years at 624 W. 1st St., Long Beach. I have been living at 1255 W. Seaside for the last ^{9 or 10} ~~5 or 6~~ years.

(2 corrections approved F. W. B.)

I am interested in archaeology and have made several trips on such expeditions. In 1930 I went to the Hawaiian Islands and was there for 14 months. In 1931-32, I went to French Oceania in search of archeological specimens. During this voyage I also visited Tubay Island and Tahiti. I return on November 16, 1932. The following year I went to the British Cook Islands and returned during the first part of 1934. On all these voyages I always sailed from San Francisco on boats of the

Once I sailed from Wilmington
on the Matson Line. F. B. W.

Union Steamship Co. of New Zealand. ^ I have not been outside of the United States since that date. I loaned my specimens to Los Angeles County Museum for 9 years. F. W. B, But on July 6, 1929, I was allowed to return to the United States from Mexico where I had gone to spend a few days on a visit. I was not allowed to reenter the U. S. for nearly a week until all my papers were checked. I have never been back to Germany since leaving there in 1911.

My Father and Mother are presently residing in Germany. My Father is a large land holder and owner of big iron, steel and other metal fabricat-

(Testimony of James D. Casey.)

ing products. I have two brothers who are residents of the United States, Edmund O. Bergmann, 61-34-220th St., Bayside, Long Island and Charles Bergmann, owner and manager of the Siberian Arctic Fur Manufacturing Co., 812 W. Sprague Ave., Spokane, Washington. Edmund returned to Germany during the last war to fight for the Fatherland. Charles came to this country about 1902 or 1903. I had one other brother, Kurt, who served in the Germany Army, Saxon regiment during the last war. He was killed in France. I have never been in or connected with the Germany Army, Navy or Intelligence Service. I have no sisters. The only correspondence I have had with anyone in Germany was with my Mother, Dresden A. Diakonissen Heim Ebenezer Comenuis Str. 33. I have never written to my Father whose address is Neuwaldenslebu, Langestr 16.

I want very much to see this present war over quick. I am disgusted with the white men for getting into this war. The white people should realize that east is east, west is west, north is north and south is south. They should not go beyond their rights. The whites should attend their own business. Other races should be allowed to worship as they please and missionaries should not be sent to tell them they shouldn't worship their idols. (Approved 4 corrections. F. W. B.)

These missionaries are lousy. I'd like to take my ~~hand and hit them in the face.~~ more of the representatives of commercial interests rather than of religious matters. They should rather prevent

(Testimony of James D. Casey.)

human sacrifice and head hunters. F. W. B. As an American citizen I would defend this country wherever the U. S. flag flies. It is not correct to be sent outside the borders of the United States to fight under a foreign flag. I want to see the end of the Hitler regime in Germany. I want to see Hitler licked but not the German people. I have a heart for the German people. There must always be a Germany. A country of 80 million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but barren and desert land with the possible exception of German East Africa. Germany ~~can~~ should never be split up. It will lead only to political unrest and war in Europe. F. W. B. We are fighting Hitler and not the German people. All American citizens have a duty after the war to help Germany and other countries appressed by dictators. F. W. B. Now that we have gone outside the United States. I hate Nazism and Communism. I do not believe that religion and politics should be in any way intermingled. If the law so required, I would fight against the Germans but would prefer

outside the U. S. but if U. S.

attacked by any, I would fight. F. W. B.

a non-combatant service. ^ After this war, the United States should get some land for the money

(Approved 1 cor F. W. B.)

and effort put into it. They should get Bermuda, Haiti and other islands in the vicinity of the United States in return for our heavy tax bur-

(Testimony of James D. Casey.)

den. F. W. B. Americans don't dislike the German people. It is Hitler who is hated. The Germans had more freedom under Kaiser Wilhelm than they do under Hitler. Hitler got into power through propaganda. I don't believe in conscientious objectors and consider them yellow.

I have never purchased any Reichwanderer marks. I never heard of them. But I have been sending 200 marks every 2 months to my mother in Germany since 1938. The last time I was able to send any was July 1, 1941. I did this through the Los Angeles office of the North German Lloyd S. S. Co. E. A. Winkler, general agent, Room 205, 608 S. Hill St., Los Angeles. In 1940, the total amount was \$176.45. The last amount was \$104.00 on July 1, 1941. I had permit from the government for this—A131192 dated September 12, 1940. I have no investments in Germany and have never sent any of my securities to Germany.

I make donations to the American Red Cross but

(Approved 3 cor F. W. B.)

not to the Long Beach Community Chest. I prefer giving to needy families directly. I have never given any money to any German organization. In 1937 and 1938 I was approached a couple of times each year to become a member of the Bund. I don't remember the names of these persons. I didn't join in as much as I don't believe in German clubs

because I'm an American citizen. F. W. B.

and the like ^ ~~It is not that I'm not proud of~~

(Testimony of James D. Casey.)

However, having been
~~being a German.~~ ^ I am proud of ~~being~~
 a German. It is a great country. Germany is one of

has had world wide admiration
 for science and commerce. F.W.B.
 the nations that ^ ~~are not asleep. German people~~
~~are wonderful. During the last war everyone fought~~
~~for our Fatherland. I came to this country to better~~
 myself. The only opportunities were in the British

Also these were similar to Teu-
 tons in social, commercial and re-
 ligious point of views, F.W.B.
 colonies and in the United States. ^ There was
 not enough in Germany. People were working for a
 dollar or fifty cents a day. I'm proud of my United
 States citizenship although I have never voted. I
 didn't become a citizen until 1937 through negli-
 gence and because I thought I might go to New
 Zealand.

I think that the U. S. should have a more re-
 (Approved 1 correction F. W. B.)
 stricted immigration law. Persons from southern
 and eastern Europe and Asia should not be allowed
 to come to this country in as large numbers as
 those from Germany, Sweden, Holland, England,

because more criminals in U. S. are from
 Balkans and eastern Europe. F. W. B.
 Ireland and Scotland ^ The Jews should be given
 a country which they can call their own and they
 should then be protected from being attacked. The
 Holy Land should be returned to them.

I have never been arrested by any police officers
 and have no criminal record. I am going back to

(Testimony of James D. Casey.)

Germany immediately after the war to see my mother. I may stay there for 4 months of the year and spend a few months on the Riviera and a few in the U. S. looking after my investments. This may become my routine for every year.

In the summer of 1941 the 2nd engineer of some boat, a German ~~who came to the U. S. about 1920~~ ~~but~~ whose name I can't recall, showed me an enlarged photograph of the damage to the English battleship *Malaya* being repair in an American port. His first name was Herrman or Henmann. He had also been to the German consul's office in Los Angeles. I am not acquainted with any of the German consuls. My only dealing with the German consul was when I had my German passport cancelled. I have never been interest in foreign exchange.

On one occasion there was some wash put on my back fence in spite of signs requesting that it not be hung there. I threw this wash off. There may have been some sailor pants there but I don't recall there being any sailor uniforms.

Many times when people ask me questions they have no business to, I give them any reply I feel like making. I have bought about \$1000 in U. S. Defense Bonds and plan to buy \$1000 worth every 6 months. In my will, I have designated the city of Long Beach as the beneficiary of my realty here in Long Beach to be used as a park between Mariposa and Santa Clara St., consisting of 9 lots. F. W. B.

(Testimony of James D. Casey.)

I have read the above statement of nine pages and it is all true. I have put my initials on each page.

Signed:

FRIEDRICH WALTER BERGMANN

Witnessed:

James D. Casey, F. B. I., Los Angeles.

[Endorsed]: Filed 11/18/42.

Q. By Mr. Howser: Mr. Casey, there were several statements made in the original memoranda that Mr. Bergmann objected to?

A. Yes, there were.

Q. Do you recall one of those statements being that you had written, "I am very proud that I am a German" and Mr. Bergmann refused to sign it until you changed it to, "I am very proud that I was a German"? A. That is true.

Q. Did Mr. Bergmann ask you for a copy of this statement that he had signed? [221]

A. I don't recall whether he did or not.

Q. Do you recall informing him that the practice and rule in the office prohibited you from giving him a copy?

A. I don't recall any talk about that particular matter.

Q. Do you recall questioning him about a certain woman who claimed to have a son in the military forces of this country?

(Testimony of James D. Casey.)

A. About a certain woman?

Q. Yes, who came to him.

A. I don't recall talking about any woman who had any son in the military forces.

Q. Do you recall having a conversation wherein you stated it was reported by the neighbors down there that some woman had come to Mr. Bergmann who had a son that objected as a conscientious objector to serving in the services of this country?

A. I don't recall that being reported by the neighbors down there.

Q. Do you recall Mr. Bergmann telling you that he would gladly bear arms for the United States of America if war was declared against Germany?

A. When we first questioned him about that, he was hesitant in his answer. He didn't know exactly what to say. And then he went on to say that he would desire to be a non-combatant, and then he finally said if he was required to do [222] so by law, he would take up arms.

Q. Do you recall that Mr. Bergmann told you that some time during the summer of 1941 a man by the name of Henman or Herman came to his premises and professed to be a Second Engineer, and showed him a picture of a boat, a British boat that had been damaged in the war?

A. Yes.

Q. You recall that Mr. Bergmann told you that he had told this gentleman that he didn't

(Testimony of James D. Casey.)

want to have anything to do with him and would not rent him an apartment?

A. No, I don't recall that.

Q. He did tell you that after the war he wanted to go to Germany?

A. He stated after the war was over that he was planning to leave this country and go back to Germany and probably down to the French Riviera and he might come back to the United States two or three months out of the year.

Q. Did he tell you the purpose of going to Germany?

A. I am not sure, but I believe he gave several different reasons why he wanted to go back to Germany.

Q. Was one of those reasons to see his mother?

A. I believe that is true.

Mr. Howser: I believe that is all, your Honor.

Mr. Dean: May I ask one question on redirect, your Honor? [223]

Redirect Examination

By Mr. Dean:

Q. With reference to the question that counsel has propounded to you, Mr. Casey, on cross examination to a portion of this written statement, Government's Exhibit No. 2, in which Mr. Bergmann refused to sign the statement that he was proud of being a German, prior to the time he refused to sign the statement including that sentence, did he in fact tell you he was proud of being a German?

(Testimony of James D. Casey.)

A. That was a statement he made to me.

Mr. Dean: That is all the redirect examination.

Mr. Jacobson: Just one question.

Recross Examination

By Mr. Jacobson:

Q. When you talked to Mr. Bergmann, did you observe that he did have some difficulty with the English language, sentence construction?

A. I didn't find that he did. I was quite surprised. It thought he spoke very well. I didn't find that he had any trouble with his verbs. I think he left out articles once in a while, as I recall.

Q. He did, when he saw the written statement, change the tense from present to past, that is, with respect to the fact he was proud of being a German?

A. He stated he couldn't have that in the statement, but he would sign a statement that said he was proud he was [224] a German.

Mr. Jacobson: That is all.

Mr. Dean: No further redirect examination, your Honor.

The Court: All right.

(Witness excused.)

Mr. Dean: At this time, your Honor, it is our understanding that one additional Government witness is on the way, and it may be, after a short recess, the witness will be available. So may we have one at this time?

The Court: Yes.

(A short recess was taken.)

The Court: All right, gentlemen, proceed.

Mr. Dean: Mr. Rankin, will you take the stand?

THOMAS NEAL RANKIN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Thomas Neal Rankin.

The Clerk: R-a-n-k-i-n?

The Witness: Right.

Direct Examination

By Mr. Dean:

Q. Mr. Rankin, I am going to ask you to speak as clearly as you can so counsel for Mr. Bergmann can hear you.

What is your occupation?

A. I am a Naval Ordnance Inspector down at the Maywood [225] plant.

Q. You live in Long Beach?

A. Yes, sir, I do.

Q. How long have you lived there?

A. About 23 years.

Q. How old are you, Mr. Rankin?

A. 28, sir.

Q. Directing your attention to the month of April, 1937, did you on that occasion attend the hearing on the petition for citizenship of the de-

(Testimony of Thomas Neal Rankin.)

fendant in this case, Friedrich Walter Bergmann?

A. I did, sir.

Q. Do you recall where that hearing was held?

A. It was held at the old Federal Building. It was the old sandstone building before this one was built.

Q. Were you present during the hearing yourself?

A. The first part of it I wasn't.

The reason I was down there, my father came from Scotland some time back and because the papers, land grant papers had been mislaid, I was called down in his stead.

Q. You were there during a portion of the hearing?

A. That is right.

Q. At that time did you hear any statement made by the defendant in this case?

A. Yes, I did.

Q. Did you hear any statement concerning service in [226] the German Army?

A. Well, it seemed——

Q. The answer is "yes," is it, Mr. Rankin?

A. Yes.

Q. Will you tell us what those statements were?

A. Well, the judge was presiding over the hearing at the time and, as I recall, he asked him questions there that really astounded me because I really didn't know them myself.

Q. Did you hear any statement concerning service in the German Army?

A. Yes. I believe it was the Turkish Army.

(Testimony of Thomas Neal Rankin.)

I think it was the artillery. And if I recall correctly, something having to do with German Intelligence came out during the conversation.

Q. Did Mr. Bergmann mention the term "German Intelligence"?

A. To my knowledge, yes, he did, as I recall.

Mr. Dean: That is all the direct examination.

Cross Examination

By Mr. Jacobson:

Q. Where did this conversation take place?

A. It took place down in the—I forget the name of the building—it was the first time I was in it. In fact, it was the old building, the old red sandstone building.

Q. Was it in a court room?

A. No, not a court room. It was in the judge's study [227] there off of the naturalization headquarters.

Q. Who was Mr. Bergmann talking to or with?

A. He was talking with Judge Yankwich. He was the one presiding over the court at the time—I mean over the hearing. I was in there with a doctor friend of Mr. Bergmann now deceased, Dr. Earel, and Bergmann and myself were there.

Q. Dr. Earel of Santa Ana, the eye specialist?

A. That is right.

Q. And there was a conversation between Judge Yankwich and Mr. Bergmann about World War I? A. Yes.

Q. Can you tell me what the judge said and what Mr. Bergmann said?

(Testimony of Thomas Neal Rankin.)

A. Well, there were a lot of questions asked there, and a lot of talking going on. He asked him about service, what he did in the war, and he said he had been with, I believe, the Turkish Army—I mean the German Army, but in Turkey at the time.

Q. Mr. Bergmann told Judge Yankwich that?

A. Yes, sir, that is right.

Q. What did Judge Yankwich have to say?

A. Of course, he was asking most of the questions. I forget just what he said there. He questioned him. He seemed to have data in front of him that—well, like he had the situation down there in black and white and he just asked him, and Bergmann said yes, that he was with the German [228] Army at that time.

A. Did you stay for the conclusion of the hearing? A. Sir?

Q. Did you stay for the conclusion of the hearing?

A. Well, for the particular hearing when the two witnesses, I being one of them, was before the judge in the case concerned, yes.

Q. Now, let me understand you. Were you a witness for Mr. Bergmann too?

A. Yes, sir, I was. I was a stand-in witness. My father was called out, and he called up and said to come down and take his place. I had known Mr. Bergmann for some 18 years, quite a while.

Q. And you were willing to go in and testify that you thought he would be a proper person to be granted citizenship? A. Yes.

(Testimony of Thomas Neal Rankin.)

Q. But you were really substituting for your father who was at sea?

A. Oh, no. My father, you see, was born in Scotland, and he came over at a very early age to this country, and for that reason the land grant papers that were taken out at the time, homestead papers I believe, had been mislead somehow, and they couldn't find that my father in theory was not what you would call a citizen, but he had been here all that time. [229]

Q. Oh.

A. So he wasn't qualified from the point of law to take over as a witness.

Q. I see; so you being native-born were qualified to do so? A. That is right, yes.

Q. Were you there when the proceedings concluded? Did you see Mr. Bergmann take his oath?

A. As I recall, that was just a part of the proceedings subsequent to the oath taking.

Q. Subsequent or prior?

A. I mean before the oath taking. And after that, I suppose it was done. I wasn't there when the oath was taken, no.

Q. Did you go back to Long Beach with Mr. Bergmann after he had been sworn in?

A. Let's see; I believe he went home with Dr. Earel. I don't just recall how that was.

Mr. Jacobson: I think that is all.

The Witness: That is quite some time back.

The Court: Now, Mr. Rankin, since you have brought me in I am getting interested.

(Testimony of Thomas Neal Rankin.)

You have known me for a long while, haven't you?

The Witness: Right; from that time on, yes.

The Court: And you have seen my name in the paper a good deal? I have been a judge for a long time; 15 years. [230]

The Witness: That is right.

The Court: Well, are you quite sure that this hearing took place before me?

The Witness: That is right, yes, sir.

The Court: This particular one here when I asked these questions? Or aren't you confusing the two occasions, when the hearing was had before the Commissioner who asked the questions, then they came in to my court and I merely gave them a pep talk, the way I usually do, about the meaning of the oath they were about to take. I divide the oath into two parts and tell them what it means, and they have to renounce ideologies. In fact, I have the speech written down. Then I have the oath taken, and then I greet them as fellow-Americans. You have been in my court when I did that?

The Witness: No, sir. The name Judge Yankwich is very—well, it is not a common name.

The Court: That is right.

The Witness: And that name stuck in my mind, you see.

The Court: I think you must be in error because there is no record of any hearing or in-

(Testimony of Thomas Neal Rankin.)

quiry before me. That is the reason I asked. This was not a contested naturalization.

The Witness: That is funny.

The Court: I mean what we call on the docket a contested naturalization which is referred to the judge. I think you are in error, not as to the facts, but that these questions were asked—because they are asked—but that [231] proof is not made here and hasn't been for 10 years before the judge.

The Witness: There was a judge that was in charge of it, was there not?

The Court: Yes, but it wasn't in court. It was before the commissioner, before the examiner, and you went as witnesses.

The Witness: Well, I would swear on a stack of Bibles that Yankwich was the name.

The Court: You would?

The Witness: Yes, sir.

The Court: Oh, I may have been the little boy who wasn't there.

The Witness: That was the name of the party concerned.

The Court: Of course, they use the name of the judge who is interested at that particular time. Well, at any rate, that is perfectly all right. It isn't material, but frankly, I do not remember. I have held naturalization many days.

The Witness: I recall it.

The Court: All the records of my contested naturalizations are before me, and they do not dis-

(Testimony of Thomas Neal Rankin.)

close my holding a hearing in regard to this applicant, and the hearing could only have been held in case the examiner was in doubt, and evidently he wasn't in doubt and recommended.

The Witness: Yes. [232]

The Court: Well, it is perfectly all right. It is immaterial whether I presided or whether someone else presided. The question is those statements were made, but I think you are in error that they were made before me. They were probably made before the commissioner who heard the case.

The Witness: If you check that, sir, I think you will find that that is so.

The Court: All right.

Mr. Dean: No redirect examination, your Honor.

The Court: All right. Step down.

(Witness excused.)

Mr. Dean: With the exception of one witness who I understand will be here at 2:00 o'clock, as I have informed counsel, the Government rests.

The Court: All right.

Mr. Howser: Your Honor, because of certain material and other things involved in this case, and under the pleadings, particularly Paragraphs 6 and 8 of the Government's complaint, it has been fully our intention to move for a dismissal of this proceeding on the ground that under Paragraph 6 it has not been substantiated as alleged in the complaint that all of Bergmann's representations

were false and fraudulent, which is the meat, as I understand such a proceeding, and under Paragraph 8 that Bergmann obtained the certificate of naturalization fraudulently and illegally. [233]

We do not believe there is any proof before the Court as to that.

Now, until the People or the Government bring to us the additional witness, we are really not in a position to make such a motion. We are willing to proceed without prejudicing any of our rights to ask the Court to entertain such a motion after they have submitted their other witness if that is satisfactory to the Court.

The Court: Well, I just do not wish to lose time, gentlemen, is all.

Mr. Howser: That is right, and that is why I suggested that manner of procedure.

The Court: I would prefer to have the matter proceed in an orderly fashion and counsel make the proper motions at the proper time. In anticipation I have studied all the cases that I know to exist on the subject. I think to protect the record counsel should have the opportunity of making it in the light of all the testimony. Can you not get the witness at 1:30, and can we not adjourn now until 1:30 for that purpose?

Mr. Dean: Your Honor, I am almost willing to concede that the testimony of this witness, as it has been told to me by others—I was just informed of the fact this morning that this witness might have some testimony that was relevant to this case, but I have not as yet talked to the witness.

The Court: Do you know if it is cumulative of the type [234] given by others? We have had everybody from banker to police officer to just the ordinary neighbors here parading before the Court. I don't know how many witnesses you have had. You have had a couple dozen anyway.

Mr. Dean: At least, your Honor. I will state that the testimony of this witness, however, will not be of such a nature that it will be proved by the witness that all of the representations made in the petition were false. I will concede that. That certainly is true.

The Court: I may say this: It is not my understanding of the law that all the representations have to be false. If a material one is false, it is sufficient because the statute which is now being codified into what is known as the Nationality Code gives conditions upon which naturalization may be secured. It gives the requirements both in the positive and the negative. [235]

It begins with 704, and first we have that a person shall not be naturalized unless he knows the English language.

In 705 we have the exclusion of certain persons who profess certain ideas. It is the recasting of the old section relating to anarchy and polygamy. It has been broadened now to include others.

Next we have 707 which is couched in the negative too and says that no person shall be naturalized unless immediately preceding the filing of petition for naturalization he continuously resided within the United States for at least five years and

has resided continuously within the United States from the date of the petition up to the time of admission to citizenship (that is 2) and during all the periods referred to in this sub-section has been and still is a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

Now, the courts have held that the failure to satisfy one of those requirements is sufficient ground for denial.

The statute which authorizes cancellation for fraud——

Mr. Dean: 738, your Honor.

The Court: ——738 says that—let's see how it is worded—"It shall be the duty of the United States District Attorneys for the respective districts upon affidavit showing good cause therefor, to institute proceedings in any court [236] specified in subsection (a) of Section 701 in the Judicial District in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

The Supreme Court in the Luria case, the leading case on the subject, has stated that: "These requirements (the requirements of the Act of 1906) plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in

name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words it was contemplated that his admission should be mutually beneficial to the government and himself, the proof in respect of his established residence, moral character and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past.”

Then the Court said: “By the clearest implication those laws show that it was not intended that naturalization should be secured thereunder by an alien whose purpose was to escape the duties of his native allegiance without taking up on himself those of citizenship here, or by one whose purpose was to reside permanently in a foreign country, and use his [237] naturalization as a shield against the imposition of duties there, while by his absence he was avoiding his duties here.”

In that case, of the three requirements, the Court held that the appellant Luria had never intended to reside in the United States.

We have others wherein another of the requirements was absent. So, without passing upon the question, I take it that if it be shown that fraud exists as to any one of them it is sufficient.

We have the cases from the last war. We have the Schurmann case in our own Ninth Circuit, *Schurmann v. United States*, 1920, 264 Fed. 917, where the cancellation was on the ground of fraud regarding the attachment to the principles of the

United States, which is part of No. 3. In that case the Court took up a book which had been published by the man, by the appellant many, many years before by showing that after the entry into the war of the United States he came forth with the same ideas. The cancellation was ordered in that case by Federal Judge Vaughan and the opinion was written by Judge Hunt and concurred in by Judge Gilbert and Judge Wolverton and held sufficient to justify the cancellation.

We have many from other circuits; *United States v. Kramer* in the Fifth Circuit. In that case the lower courts had dismissed the bill and held it insufficient, and the Court held that the proof was sufficient to cause cancellation. That [238] case arose in Texas and the Court said this;

“American citizenship is a priceless possession, and one who seeks it by naturalization must do so in entire good faith, without any mental reservation whatever, and with the complete intention of yielding his absolute loyalty and allegiance to the country of his adoption. If he does not, he is guilty of fraud in obtaining his certificate of citizenship.

There can be no doubt that, had the defendant in this case been guilty of the utterances with which he is charged before his naturalization, and that fact had been known to the Court, he would not have been admitted. The proof makes out a *prima facie* case of the disloyalty of the defendant, and shows his continuing allegiance to the German Emperor.”

The proof here is directed to one cause only. The government has not attacked the man's moral character or his thrift or his industry. It couldn't very well; it wouldn't be material anyway. But the government has produced witnesses who have testified to certain acts which tend to show disloyalty to the principles of American Government which is clearly traceable to the time of naturalization.

There was a witness who testified that I conducted the examination. I may say, frankly, if I had conducted the examination and had seen this, there would have been no naturalization because I wouldn't allow a person to be [329] naturalized, a man who put down on paper, "I will not fight against Germany." He would have to do a lot of talking to talk me out of it.

Mr. Howser: Your Honor, that is principally the essence of the motion, that the testimony——

The Court: I am merely saying there is clearly a *prima facie* case here. I don't want to criticise Mr. Barber or anyone else, but when a man deliberately writes down "I won't fight against Germany" it comes within the McIntosh case. I don't know of any judge here who wouldn't have required some very, very positive proof of loyalty to the United States after seeing that statement.

So we can start right there with a mental reservation and then tie the rest together, and if you tie them together you clearly have a *prima facie* case. The Government does not have to prove that the entire application was false. It attacks

it only in the essential things and that is the intention. You want to remember it doesn't say "loyalty" only. It says also "well wishing, well disposed to the good order and happiness of the United States." A man can't be said to be well disposed to the good order and happiness of the United States who said the Japanese had to attack us at Pearl Harbor, who said, "I am a Nazi," and who said, "We—Hitler will do this and that."

If you look up the last issue of Time Magazine you will find some of the Congressmen have been reelected now who [240] said as vile things. Leave those aside and the fact is you have got a very strong prima facie case here which, if uncontradicted, would require the cancellation of citizenship.

I am not anticipating your motion, but I am merely indicating to you as I understand the law the Government has to prove just falsity in one respect, that is, at the time he swore allegiance to the United States he in fact had not surrendered his loyalty to his home country, and it doesn't have to prove any more.

Mr. Howser: Our thought was, your Honor, that the Government was so informed by their own witnesses and as such there possibly couldn't be any fraud because of the reservations that were put in the application itself.

The Court: No, no. That wasn't brought to the attention of the Court. There is no waiver of a fact like that from concealment. It may well be that in the particular instance if you had nothing else but that statement in the reservation, that

possibly it might be held, "Well, the Government having failed to notice that and the matter not having been called to the Courts, the Government shouldn't rely on it." But when other things appear subsequent, you may start with that as a tying point, you see. The fault wasn't his. If there is a fault, it wasn't the examiner's in allowing him to talk him out of it, because he believed the McIntosh case so justified it. It is true Mr. Barber and the others [241] are very generous to conscientious objectors because they realize they are recognized in our law. We make provision for them. But the law says an American, a native born American may be a conscientious objector, but an alien cannot be a conscientious objector and become a citizen.

In other words, the Government demands of an alien who seeks naturalization a standard of conduct that is higher than a native born citizen. You can be the most immoral man in the world and you can't be denied the right to vote at elections. The only thing that deprives you of citizenship is a conviction of a felony. Let there be proof of the least departure from rectitude during that period of five years, even ordinary sex sins which are not even considered a crime under the law, let there be a showing of that and citizenship is denied immediately.

As I say, it may well be that that alone might not be sufficient, but when you have all the others, of course, that becomes merely important as ex-

pressing a hesitation which the conduct later on gave whole expression.

I am willing to admit that the Government would be barred, so far as that allegation is concerned, so long as he convinced the officer, if that was the only thing, the Government would be barred from basing revocation on that alone, but the Government merely offers that as a chain, as a link in his chain of proof to show that these expressions are not spontaneous, sporadic expressions but the continuous express- [242] ion of a philosophy which antedated his application for naturalization, and for that purpose it has a right to be considered. You made no objection to it being received in evidence.

Well, I merely wanted to indicate to you my understanding of the law. It is 12:00 o'clock now.

Mr. Dean: Your Honor, may I make a statement? Mr. Barber has not asked me to do this, but I felt for the sake of the record I should state it. There is a document here which I have had in my possession indicating that Mr. Barber called to the attention of his superior officer the reference to question No. 26 and that the decision as to what was to be done in that case did not rest in Mr. Barber's province.

The Court: This was not a contested naturalization, as we call it.

Mr. Barber: That is right, your Honor.

The Court: This was a straight recommendation and there was no bearing before me or any other judge on the regular monthly calendar we

call for contested naturalization matters. Is that correct?

Mr. Barber: That is correct. The Court never had this before him at all.

The Court: So long as Mr. Barber is under oath, we will consider this answer too so the record will show. I merely put in the record what we know. I didn't want to [243] humiliate the young man by telling him he just took the name that may have appeared there in the summons. I was so certain, unless it was a contested naturalization, that it would never come before any of us. I want to state it as a fact, because that is our procedure here. I have held individual naturalizations, but not in this district. In the Western District of Washington they still hold them, and in Tacoma I have held naturalizations on three occasions, at least, and asked all the questions, examined the witnesses day in and day out. I then realized what hard work Mr. Barber and the others are really doing, after I had to handle individual cases while presiding there.

Well, how about this witness?

Mr. Dean: Well, your Honor, the witness' testimony is with reference to a matter that has heretofore not come up. It has no reference to counsel's motion.

The Court: All right, gentlemen, we will take a recess then, our regular recess, and I will hear you at the proper time and make any comment. What I have said is merely to indicate my comprehension of the law in view of your statement

that you felt they had to prove falsity in everything.

Mr. Dean: I might have it understood that I haven't talked to the witness and there is a chance that I may decide the testimony is not relevant.

The Court: I wouldn't want you to put a witness on the [244] stand unless you knew what he was going to testify to. Contrary to the general belief, the Court feels the lawyer does not perform his duty to the Court by putting a witness on the stand without knowing what the witness is going to say because he guarantees the veracity of the witness to the Court.

When a witness is asked, "Did you talk to Mr. Dean?" I would interrupt and say—I am just using your name as a way of illustration—my answer is, "If you didn't, I would be very much surprised that Mr. Dean would put a witness on the stand in advance without talking to him in advance."

All right, we will take our recess until 2:00 o'clock P. M.

(Whereupon, at 12:10 o'clock P. M., a recess was taken until 2:00 o'clock P. M., of the same day.) [245]

Los Angeles, California
Wednesday, November 18, 1942
2:20 P. M.

The Court: All right, gentlemen, proceed.

Mr. Dean: The witness who was supposed to be here has not as yet arrived and it is likely

she will not be here until 3:00 o'clock. It occurred to me that should we consider her testimony material that the Court might put her on out of order.

The Court: You will have to rest without condition, and later if she comes, if you ask me, I will consider the question of reopening the case for putting her on.

Mr. Dean: At this time I rest.

The Court: So counsel may make their proper motions.

Mr. Howser: May it please the Court, at this time it is out intention and we do so move that the complaint in this proceeding, in United States versus Bergmann, be dismissed. For brevity purposes, may I refer to the basis for the motion as heretofore stated immediately before our noon recess?

The Court: You may repeat it.

Mr. Howser: The basis of it is that the allegations of the complaint, more particularly referring to allegation 6 of the plaintiff's complaint, has failed for lack of proof in that it has not been established that the representations were false and fraudulent. There is no proof that the defendant Bergmann was not, in fact, attached to the principles [246] of the United States, nor has he been for the five-year period of time before filing his intentions; and particularly as to paragraph 8 wherein it is alleged that Bergmann obtained a certificate of naturalization fraudulently and illegally.

Now, the Court has indicated certain things, and because of the thorough review of the law at hand and the cases that we have concerning such matters, your Honor, we are willing to not further press this motion at this time and abide by any decision the Court should make in that respect.

The Court: Well, as I indicated before, I feel the evidence presented by the Government is sufficient to sustain the burden of proving the allegations of the complaint. The motion will be denied.

Mr. Jacobson: Call Dr. Crump.

DR. IRVING J. CRUMP,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Dr. Irving J. Crump.

Direct Examination

By Mr. Jacobson:

Q. You are Dr. Irving J. Crump, of Long Beach, are you not? A. Yes, sir. [247]

Q. You have been a dentist in Long Beach for how long? A. About 22 years.

Q. Do you have any family, Doctor?

A. I have eight children. My wife is deceased.

Q. Have you any of your children in the United States military service at this time?

(Testimony of Dr. Irving J. Crump.)

A. I have three boys who are in the service.

Q. Do you know Walter Bergmann, the defendant in this case?

A. Yes.

Q. How long have you known him?

A. Oh, many years: Probably 15 years.

Q. Your dental office is maintained in that general section of Long Beach where Mr. Bergmann has his Seaside property?

A. Yes.

Q. During the many years you have known him, have you had occasion to visit with him or converse with him on more than one occasion?

A. Oh, yes. He has been in and out of the house quite often.

Q. How many times would you say you have talked to Mr. Bergmann since you have known him?

A. What is that?

Q. How many times would you say you have talked and visited with Mr. Bergmann since you have known him? [248]

A. Oh, probably a good many hundred times.

Q. What subjects have you discussed over the years since you have known him?

A. Well, one thing he talked to me about one time was his South Sea trip. He is quite a hand to go off and collect specimens. I think he is very much of an enthusiast along that line. I would say he is a very good citizen, as far as that goes.

Mr. Dean: I ask that that be stricken, your Honor.

The Court: It may be stricken.

Q. By Mr. Jacobson: Have you ever had a

(Testimony of Dr. Irving J. Crump.)

conversation with Mr. Bergmann in your home when your daughter was present about what he intended to do with his property?

A. Yes. At one time we were kind of talking——

Q. Just state where this was. A. Yes.

Q. And when, if you can.

A. I should judge about a year ago.

Q. In your home? A. Yes.

Q. You have your dental office in one portion of your home and then you live in the rest of it?

A. That is right.

Q. This was in your home part? A. Yes.

Q. Who was present? Do you recall? [249]

A. My daughter-in-law.

Q. Is that your son's wife?

A. My son's wife, yes.

Q. And yourself and Mr. Bergmann were present? A. Yes.

Q. What was said by Mr. Bergman or your daughter-in-law or yourself about his holdings in Long Beach?

A. Oh, she said, "Walter, what are you going to do with all your money if you don't get married?"

He said, "I will probably give it to the Salvation Army and the Y.M.C.A."

Q. Was there any further conversation along that line? A. No.

Q. In any other conversations has Mr. Berg-

(Testimony of Dr. Irving J. Crump.)

mann indicated that he was going to dispose of his property in that way?

A. No. That is the only time he ever spoke of it to me.

Q. Have you ever spoken or conversed with Mr. Bergmann on the subject of his political beliefs?

A. Well, he told me he distributed circulars, the Nye circulars that came out on the intervention question. That was previous to Pearl Harbor, I should say.

Q. You mean when the great campaign——

A. When the campaign was on.

Q. ——of Intervention vs. Isolationism was on?

A. Yes, sir. [250]

Q. Have you talked to him about that at any time, about his beliefs in that regard?

A. Well, yes, I have.

Q. Do you know about when that was?

A. I should judge that must have been maybe six months ago.

Q. Where? A. In my house.

Q. Who was present?

A. My daughter-in-law.

Q. Was that before or after the attack on Pearl Harbor?

A. That was after Pearl Harbor.

Q. After the attack on Pearl Harbor?

A. Yes.

Q. What was said by you or Mr. Bergmann or your daughter-in-law?

(Testimony of Dr. Irving J. Crump.)

A. Well, he was opposed to the active intervention, of course, but I wouldn't say that was before Pearl Harbor. I mean that was before Pearl Harbor, not after.

Q. Now, at any time since Pearl Harbor have you ever talked to Mr. Bergmann about this incident at Pearl Harbor where the Japanese attacked our fleet?

A. Oh, yes. I think he thoroughly was with the United States.

Mr. Dean: Just a moment. I object to that as a conclusion. [251]

Q. By Mr. Jacobson: Just answer yes or no if you had any conversation with him since Pearl Harbor about that. A. Yes.

Q. Did you have more than one conversation with him about that?

A. No, just when he was at the house.

Q. About when would you say that was?

A. About six months ago.

Q. Who was present and where did it take place?

A. My son and daughter-in-law were both there at that time.

Q. Was your son home on leave?

A. No. This is another son who is working in an airplane factory.

Q. What was said by any of you about the attack on Pearl Harbor?

A. Well, we just discussed it generally and, of course, we were very much——

(Testimony of Dr. Irving J. Crump.)

Q. What did Bergmann say if you recall?

A. Well, as I recall it, he thought the United States was justified in going to war with Japan.

The Court: What did you expect him to think? That even after we were attacked and Germany and Japan announced that they were at war with us you expected him to say "We oughtn't to fight even then"?

The Witness: Oh, no. [252]

The Court: What did he say in so many words, Dr. Crump?

The Witness: He thought we were justified.

The Court: Who?

The Witness: The United States.

The Court: In doing what?

The Witness: In going to war with Japan.

The Court: How about Germany?

The Witness: I should say the same thing.

The Court: Are you expressing your ideas or what he expressed?

The Witness: That was his idea.

The Court: You were an isolationist too, I guess?

The Witness: No. I have three sons in the service and I am not an isolationist.

The Court: That doesn't make any difference anyway.

The Witness: I am signed up myself.

(Testimony of Dr. Irving J. Crump.)

The Court: You were an isolationist, were you, before the war?

The Witness: No.

The Court: I just didn't want you to *contribute* to him your own ideas.

The Witness: No, I am not.

Q. By Mr. Jacobson: Had you ever talked to Mr. Bergmann prior to Pearl Harbor about Mr. Bergmann's views on militarism? [253]

A. Yes, I have several times.

Q. Can you recall the approximate times?

A. Oh, four or five years ago we were talking about it generally. He said if he had to go back to Europe he preferred to live in Switzerland.

Q. Did he give the reason?

A. He liked their form of government.

Q. Did he make any comment about militarism?

A. He didn't approve of the military.

Q. Did he say that? A. Yes.

Q. Have you observed Mr. Bergmann's work in the Harbor district there with respect to beautifying property and the like? A. Yes.

The Court: Let's not make that an issue. The Government is not challenging the man's thrift and it has nothing to do with loyalty at all. A man may be the slouchiest man in the neighborhood and still be a good citizen. I am not interested in how good a worker he is or how much money he has made or how he has taken care of his property and built it up for the benefit of the community. That is not a test of loyalty in this particular case. I

(Testimony of Dr. Irving J. Crump.)

don't think what he does to his property is material. It is a side issue and has nothing to do with it. Nobody has criticized him so far and it wouldn't make any difference if they did. [254]

Mr. Jacobson: I simply wanted to show the man's efforts in civic betterment.

The Court: If a man improves his own property and makes a lot of money, that has nothing to do with the kind of citizen he is. Everybody admits he has improved his property and that he works all the time at it. That has nothing to do with this case here. We don't enter into that. We don't ask how much money a man makes when he is interested in citizenship. We don't even deny citizenship on the mere ground the man is poor or on charity unless it appears that he lived here for many years and then when he was about to obtain a pension all of a sudden he decides he loves the United States enough to become a citizen. We don't deny citizenship on the ground of poverty. Otherwise you would have to go and prove his bank account and what would the Government answer to that? They couldn't prove that he made it dishonestly. It wouldn't be material anyway.

Mr. Jacobson: Of course, there has been testimony that he was going to liquidate his holdings and that he had actually liquidated some of them and sent the proceeds to Germany.

The Court: That may be all right. You can restrict it to that, but as to what improvements

(Testimony of Dr. Irving J. Crump.)

he makes on his property doesn't make any difference. That is why I stopped Mrs. Thiessen from telling us how badly the furniture was being treated and what a crime or shame to allow such nice [255] furniture to be eaten up by moths when people could live there and pay good rent. I stopped that purposely so we wouldn't be getting into some collateral issue. The only question is: Is there fraud in securing this petition in the particular instance that the man was not attached to the principles of the Government of the United States as shown by his conduct before and after. That is all that is before the Court.

There is an allegation in the complaint also that he did intend to reside elsewhere and if you want to direct evidence to that, that is perfectly all right.

Mr. Jacobson: Very well.

The Court: It is evident even from the testimony of this witness that he talked constantly about going to some place else, because he talked about going to Switzerland and living there. I want to confine the issues to the one particular question and that is the question alleged in the complaint which the answer joins issue.

Q. By Mr. Jacobson: Doctor, have you ever had any conversation with Mr. Bergmann in which the subject of his return to Germany was discussed?

A. Yes.

Q. On more than one occasion?

A. No, I don't think so.

(Testimony of Dr. Irving J. Crump.)

Q. When was it with reference to before the United States went to war? [256]

A. This was along about six or seven years ago.

Q. Where did it take place?

A. At my house.

Q. At your house? A. Yes, sir.

Q. Do you remember if anybody else was present besides you and Mr. Bergmann?

A. My wife was there at that time.

Q. Your wife was living then? A. Yes, sir.

Q. That would be in about 1936, would you say?

A. Yes.

Q. What was said about whether Mr. Bergmann intended to return to Germany or not?

A. He said if he returned to Europe he wouldn't go to Germany; he would go to Switzerland for the reasons I gave.

Q. I can't hear you.

A. If he returned to Europe, he wouldn't go to Germany, but he would go to Switzerland because he preferred to live in Switzerland.

Q. Did he say anything about having any relatives in Germany?

A. He didn't mention his relatives at all.

Q. At that time your long acquaintance with Mr. Bergmann have you ever had any conversation in which Bergmann expressed his views on the American form of Government? You have [257] to answer that yes or no. A. Yes.

Q. Would you say you had more than one?

A. Yes, I presume I have had several.

(Testimony of Dr. Irving J. Crump.)

Q. About when did they take place?

A. Well, previous to Pearl Harbor he was very much of an interventionist.

Q. When?

A. That would be previous to Pearl Harbor, a year ago or more.

The Court: He was what?

The Witness: He was an interventionist.

The Court: No. You mean he was opposed to intervention? That is an Isolationist.

The Witness: Yes, that is right.

Q. By Mr. Jacobson: I didn't have in mind his view on some purely American policy of the moment, but I mean as to the type and form of our Government in general. Had he ever expressed any views one way or the other on that?

A. Yes. He admired this Government.

Q. Did you ever hear him express any views on the government of the Third Reich or the government of Germany under Hitler?

A. More so under the Kaiser, not under Hitler; before Hitler's time.

Q. Well, what was his view on that? [258]

A. I understand he left Germany on account of that condition there, being under the Kaiser and not liking him.

Mr. Dean: I ask that that be stricken.

The Court: That may be stricken.

Q. By Mr. Jacobson: Did he tell you he had——

A. He left Germany on that account.

(Testimony of Dr. Irving J. Crump.)

Q. Did he ever discuss with you whether or not he had any membership in any German-American Bund or German Bund or club?

A. He said he had no connection with any of them.

Q. He did tell you that? A. Yes.

Q. In his conversation did he ever give any reason why he hadn't ever had any membership in any clubs?

A. Well, I should judge because he didn't approve of it.

Mr. Dean: I ask that that be stricken.

Q. By Mr. Jacobson: Well, did he give any reason that you recall? A. Yes.

Q. What reason did he give for not having membership in any German Bunds or clubs?

A. Because he was living in the United States and under the United States form of government.

Mr. Jacobson: You may cross-examine. [259]

Cross Examination

By Mr. Dean:

Q. Dr. Crump, you say you have known Mr. Bergmann for 15 years? A. Over 15 years.

Q. Have you in the course of that time rendered professional services to him as a dentist?

A. Several times.

Q. Dr. Crump, you stated on direct examination just a few minutes ago that you had a conversation with Mr. Bergmann about six months ago——

A. Yes.

(Testimony of Dr. Irving J. Crump.)

Q. —in which he indicated he was opposed to intervention. Now, you later charged that and said it was before Pearl Harbor. A. Yes.

Q. What makes you sure it was before Pearl Harbor?

A. Because I checked myself and recalled I was wrong.

Q. I noticed you did. I want you to tell us why you checked yourself.

A. That was it; I made a misstatement.

Q. Yes, but you remember your first testimony was that it was six months ago. Why did you feel that you were incorrect in making that statement?

A. I know I was.

Q. I say why? Why were you incorrect? [260]

A. Because since Pearl Harbor he hasn't been talking intervention at all.

Q. Is there anything that assists you in determining that that conversation actually took place before December 7, 1941? What is it that makes you think it occurred before Pearl Harbor?

A. I know it did because I talked to other Germans down there previous to Pearl Harbor and he was of the same opinion.

Q. And that is the only reason you think it occurred before Pearl Harbor?

A. I know it occurred before Pearl Harbor.

Q. Now, Dr. Crump, you said that Mr. Bergmann indicated he was opposed to intervention. Did he ever use the term "intervention"?

(Testimony of Dr. Irving J. Crump.)

A. Well, I wouldn't know whether he used the term "intervention" or not. What he was telling me, he distributed these circulars that Senator Nye put out and I presume that is intervention.

Q. But you don't recall him using that term "intervention"? A. No.

Q. Do you recall what he said?

A. He said he distributed these circulars.

The Court: In distributing them did he say what they were, or did he say, "Read something I believe in"? [261]

The Witness: Yes; they were something he believed in.

Q. By Mr. Dean: Was there anything else that he said? Was there any other explanation of any kind besides that? A. Not that I recall.

Q. Now, you have also said that Mr. Bergmann admired this Government. Did Mr. Bergmann in these conversations with you use the words "I admire this Government"? A. Yes.

Q. You are positive he used that term?

A. Yes, sir.

Q. Did he explain why he admired it?

A. Because—well, it was on account of its free institutions.

Q. Did he say "free institutions"?

A. Yes, sir.

Q. Are you positive he said that?

A. Yes, sir.

Q. Do you recall any other explanation by Mr. Bergmann as to why he admired this government?

(Testimony of Dr. Irving J. Crump.)

A. No, I don't know as I do.

Q. Now, you have said you have known him in excess of 15 years. Dr. Crump, at any time during that period has he ever mentioned his relatives to you?

A. Since this affair come up he has mentioned his mother to us. [262]

Q. But he never mentioned his mother to you——

A. Since then he has.

Q. But not before that time?

A. Not before that, no.

Q. What was the occasion of his mentioning his mother to you since this affair come up?

A. When he was telling me he had no connection with the German Bund or the different societies. He said the only connection he had in Germany was he sent his mother money previous to Pearl Harbor.

Q. You are certain you have seen him a good many hundred times? A. Yes, sir.

Q. And at no time he ever mentioned his relatives to you? A. No.

Mr. Dean: I think that is all the cross examination.

Mr. Jacobson: May the doctor be excused, your Honor?

The Court: Yes.

(Witness excused.)

The Court: Call your next witness.

By Mr. Jacobson: Mr. Mitchell. [263]

JOHN W. MITCHELL,

called as a witness by and on behalf of the defendant,
having been first duly sworn, was examined and
testified as follows:

The Clerk: Please state your name.

The Witness: Mitchell; John W. Mitchell.

Direct Examination

By Mr. Jacobson:

Q. Mr. Mitchell, you live in Long Beach?

A. Yes, sir.

Q. What is your job?

A. I am a letter carrier.

Q. With the Long Beach Post Office?

A. Yes, sir.

Q. How long have you been a letter carrier?

A. 13 years.

Q. In the course of your being a letter carrier
have you carried mail to Walter Bergmann?

A. Yes, sir.

Q. What route was that that you had when you
carried mail to him? A. I beg your pardon?

Q. What route was that? A. 24.

Q. 24? A. Yes, sir.

Q. Is that the same route you are still on? [264]

A. No. 24. I have been there three years.

Q. How did you happen to meet Mr. Bergmann?

A. The same as I meet all my patrons, in the line
of duty.

Q. I am having trouble hearing you, Mr. Mitchell;
I am sorry. Could you talk a little louder, please?

A. Yes, sir.

(Testimony of John W. Mitchell.)

Q. How did you happen to meet Mr. Bergmann?

A. The same as I do all my patrons, in the line of duty.

Q. That is, you carried mail to him?

A. Yes, sir.

Q. Now, did you take notice of the—how many times a week Mr. Bergmann got mail while you were delivering mail to him?

A. Yes, I did.

Q. What was his average delivery or, as you call them, stops, I believe?

A. Stops or deliveries, either one.

Q. About how many a week?

A. About twice a week.

Q. Pardon me?

A. About twice a week.

Q. Now, did you notice from the inscriptions on the envelopes where the mail had come from?

A. Yes, sir; I did. [265]

Q. Now, where did Mr. Bergmann get mail that you observed from the inscription on the envelopes?

A. Most of his mail came from the Hutton Brokerage Company in Long Beach. I think it is on First Street. He got some mail from some insurance company. He also got mail from the Federal Government. He also got mail from the oil companies—some oil company. I am not positive what one.

Q. Would it have been the General Petroleum Company?

A. The General Petroleum Company, I think.

Q. Now, did he ever get mail from foreign countries?

A. He did.

Q. From what country?

A. From Germany.

(Testimony of John W. Mitchell.)

Q. Now, do you recall about how much mail he received from Germany while you were calling on him or carrying mail to him?

A. He received two letters in the last three years.

Q. Do you recall anything about the postmark on the letters? A. I do.

Q. How were they postmarked?

A. They were postmarked from his mother, Mrs. Bergmann.

Q. Now, did you ever deliver him any German——

Mr. Dean: Just a moment, please. I ask that the last answer be stricken as a conclusion of the witness. [266]

The Court: What is it?

Mr. Dean: It is concerning the postmark and he said it came from his mother. I don't believe this man is competent to so state.

The Court: You may state the name it had. Do you know the German word for mother?

The Witness: Mutter.

The Court: Was it written on the outside of the envelope?

The Witness: It was written "Mrs. Bergmann."

The Court: What is the German for Mrs.?

The Witness: It was written "Mrs." It wasn't written in German.

The Court: It was written "Mrs."?

The Witness: It was written in English.

The Court: Mrs. so and so?

The Witness: "Mrs. (some initial) Bergmann."

(Testimony of John W. Mitchell.)

The Court: But you didn't know it was his mother?

The Witness: Walter told me it was his mother.

The Court: All right.

Q. By Mr. Jacobson: This mail from Germany had "Mrs. (some initial) Bergmann"?

A. Mrs. Bergmann in the return address corner, yes.

Q. Do you remember what the return address was? A. No, I don't.

Q. Did you ever discuss these envelopes from Germany with Mr. Bergmann? [267]

A. Did I what?

Q. Did you ever discuss who this person was?

A. Not at the time, no.

Q. But at any time have you discussed that?

A. The last one he received I imagine was about a year and a half ago and I asked him if he ever heard from his mother—oh, about seven months ago, I would say—and he said——

Mr. Dean: Just a moment, please. I am going to object to the balance on the ground it is hearsay.

The Court: Yes.

Q. By Mr. Jacobson: Do I understand you had a conversation with Mr. Bergmann about letters from his mother?

A. No, I just asked if he had ever heard from his mother and he said——

Mr. Dean: Just a moment. I object to the balance as a conclusion of the witness.

(Testimony of John W. Mitchell.)

Q. By Mr. Jacobson: Had you ever delivered any——

The Court: He has already testified that he delivered letters which he was told were from his mother. I will allow that to stand. What he told about his mother, the objection will be sustained at the present time.

Q. By Mr. Jacobson: Did you ever deliver any magazines of any kind to his place?

A. No magazines and no papers.

Q. No periodicals or papers? [268]

A. No, and no advertising matter.

Q. Pardon me?

A. No advertising, no periodicals, not anything but first class mail.

Q. That is the only kind of mail you ever delivered to him?

A. That is all he ever got.

Q. Did you and Mr. Bergmann ever have any conversations as you delivered the mail?

A. Just on generalities, is all.

Q. That is, you passed the time of day and went about your business? A. That is all.

Q. Did you ever hear any of the neighbors express any opinions about Mr. Bergmann?

Mr. Dean: Just a moment. I object to that as being irrelevant and calling for hearsay testimony.

The Court: I don't think any expression by the neighbors would be proper if you wanted to prove bias or prejudice of any particular person. The

(Testimony of John W. Mitchell.)

question can't be determined by his reputation in the community.

Mr. Jacobson: I was only laying that as a foundation, your Honor. My next question is if he recalls who these neighbors were who made such remarks. I don't know if they were any of the witnesses who appeared here or not.

The Court: Well, I don't see the materiality of it. [269]

You may take one of these persons who testified and ask him if he had ever reported him. I don't know whether they would report to the postman or not. The postmen in Long Beach are friendly as well as other people. I didn't know that they went on a visiting tour every time they delivered mail.

Mr. Jacobson: I think it is a small town within itself where Mr. Bergmann lives, your Honor.

The Court: I don't know what the object is. If you tell me what your object is, it may be perfectly all right.

Mr. Jacobson: My object was to establish that this witness could establish that some of his neighbors, among whom may be witnesses who appeared against him were prejudiced against Mr. Bergmann and envious of him and had so stated to him.

The Court: Well, I don't know. I don't see where that is any different. Some people are envious of anybody that is successful. Now what has that got to do with it?

(Testimony of John W. Mitchell.)

Mr. Jacobson: I had the idea, your Honor, that none of the witnesses who have testified as to Mr. Bergmann being a German sympathizer *were* naturally admit that they are activated by a deep dislike for him; and if I can prove it by other witnesses, I think the Court could be informed of that fact.

The Court: You have a complete list of them. If not I will let you borrow Mr. Summers' minutes and you will find [270] a list of all the persons who testified. You can go down the line and ask him if he ever heard any of these people express any dislike about him, but to ask in a general way an impeaching question of that character is not proper.

Q. By Mr. Jacobson: Mr. Mitchell, do you know Mr. and Mrs. Fred H. Huggins? A. Yes, sir.

Q. Are they on your route? A. Yes, sir.

Q. Have they conversed with you about Mr. Bergmann?

A. Well, I wouldn't exactly call it conversation.

Q. Have they ever made any remarks to you about him?

A. They made a remark one morning when there was a little talk going around the neighborhood of what has come up now; wanted to know what I thought of that damned dutchman. That was his exact words.

Q. That was Mr. Huggins' statement to you?

A. Yes, sir.

Q. Do you know Emma V. Thiessen? Is she on your route? A. Thiessen?

Q. Yes.

(Testimony of John W. Mitchell.)

A. I know a Mrs. Thiessen on American Avenue, but I have never talked with her.

Q. Do you know Mrs. Kinder? Is she on your route? A. Yes, I do.

Q. Has she ever made remarks to you about Mr. Bergmann? [271] A. No, she never has.

Q. Do you know Mr. Vern V. Graham, the police officer? A. Who?

Q. Graham, Vern Graham?

A. No, I don't.

Q. Mr. Haschkae; is he on your route?

A. What is the name?

Q. Jules Haschkae; some people call him Julius Haschkae.

A. He has moved off there now.

Q. He was on your route at one time?

A. I did know him, but he has moved away.

Q. Was that some time ago? A. Yes, sir.

Mr. Jacobson: That is all.

Mr. Dean: Is that all the direct examination?

Mr. Jacobson: Yes.

Cross Examination

By Mr. Dean:

Q. Mr. Mitchell, of course you have no way of knowing what mail Mr. Bergmann received which would have been sent to him General Delivery in Long Beach?

A. I don't know anything about General Delivery at all.

Q. In other words, he might have received any

(Testimony of John W. Mitchell.)

number of letters General Delivery that you would know nothing about? [272]

A. Special delivery, general delivery, the box section. There are several different ways of getting mail.

Mr. Dean: I think that is all the cross examination, your Honor.

The Court: Step down.

(Witness excused.)

JOHN HORAN,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined, and testified as follows:

The Clerk: What is your name?

The Witness: John Horan.

The Clerk: H-o-r-a-n?

The Witness: Yes, sir.

Direct Examination

By Mr. Jacobson:

Q. Mr. Horan, you live at 51 Santa Clara Avenue, Long Beach? A. Yes, sir.

Q. Is that right? A. Yes.

Q. Do you own that property. A. Yes, sir.

Q. How long have you lived there?

A. Over 19 years.

Q. About 19 years? A. Yes. [273]

Q. Was it about 1923 when you moved in?

(Testimony of John Horan.)

A. Yes.

Q. Now, how long a time have you known Mr. Bergmann?

A. Well, I have known him since 1923.

Q. That is, you met him about when you moved in yourself?

A. He was in there before I come to Long Beach, that is, to Santa Clara Street.

Q. When you moved in Bergmann owned a piece of property where? A. Across the street.

Q. During these last 19 years have you seen quite a bit of Mr. Bergmann?

A. Well, I have seen him a lot. Sometimes he wasn't there. He would go away for awhile, and go to Los Angeles, but I have seen him dozens of times, maybe, during the day—hundreds of times, as far as that goes.

Q. It would be rather difficult for you to tell how many times? A. I couldn't tell you.

Q. Does Mr. Bergmann come over and visit with you occasionally?

A. Why, no. I used to go around that way and see him work. He is a great worker around here. He has come over sometimes.

Q. Have you had a great many conversations with him in these years? [274]

A. I have, yes, sir.

Q. Now, directing your attention to Mr. Bergmann's citizenship in the United States, do you recall when Mr. Bergmann became a citizen?

(Testimony of John Horan.)

A. He told me, if I must be correct, about four or five years ago.

Q. Four or five years ago?

A. About that time. Four or five, I would say. He told me he was a citizen and he was very proud of it.

Q. At that conversation was anybody besides you and Mr. Bergmann present?

A. How's that?

Q. Was anybody besides you and Mr. Bergmann present when he told you that?

A. No, I don't think there was.

Q. Where did it take place?

A. Right outside on the sidewalk.

Q. I don't hear you.

A. On the sidewalk, just on the side of his property on Santa Clara there.

Q. On one side of his property, the west side?

A. That would be the west side.

Q. That faces the front side of your property?

A. Yes.

Q. Your property fronts east and Mr. Bergmann's property fronts south? [275]

A. Yes.

Q. Did you ever talk with Mr. Bergmann about Germany? A. Sometimes.

Q. Do you recall any years or months when you did have a talk about Germany? Just answer that yes or no.

A. Well, I talked to him about—he told me that his mother was over there.

(Testimony of John Horan.)

Q. Do you remember when that was?

A. What month?

Q. No, I mean in the term of years, or was it recently or a long time ago or when?

A. Well, it was quite a while ago.

Q. With reference to him telling you he had become a citizen, would you say it was before that or after that?

A. It was before that, I believe.

Q. Were you and he together alone again, or was someone else along with you?

A. There was nobody, just I and him.

Q. Is that all he said, or do you recall now anything more?

A. He told me his mother was there and he sent her money. He said that he would leave his property to the Salvation Army and the City and the Y.M.C.A.

Q. Now, you are mentioning some conversation wherein he spoke about what disposition he would make of his estate?

A. Yes. [276]

Q. Can you place the date of that or the year?

A. I can't. I don't know the date.

The Court: Where was he going to go? Did he tell you?

The Witness: No, your Honor, he didn't

The Court: What brought up the problem? He is a young man. What brought up the problem of his willing the property?

The Witness: He was telling me he would like to lease it and that he would like to lease it to somebody and go away for awhile.

(Testimony of John Horan.)

The Court: Go where?

The Witness: I don't know.

The Court: All right.

Q. By Mr. Jacobson: During the time you have known Mr. Bergmann he has gone on South Sea trips, hasn't he?

A. Well, I heard he went there.

Q. That is, he went away on some trips?

A. He went away.

Q. Did you ever see his collection of shells and things like that? A. No.

Q. When Mr. Bergmann talked about his mother, I didn't understand whether you said he said he sent her money or not? A. He sent her money.

Q. In that same conversation did he make any remarks as to whether he had sent money to Germany or any other foreign country? [277]

A. No, he didn't tell me anything.

Q. He didn't say anything about it.

A. No.

Q. Have you ever had any conversation over these many years with Mr. Bergmann about the United States? That is, what he thought of the form of government here?

A. No, not beyond getting papers, getting his papers; what I told you.

Q. He mentioned getting those to you as you previously stated?

A. Yes, sir.

Q. When the campaign of isolation against in-

(Testimony of John Horan.)

tervention was going around, did Mr. Bergmann talk to you about that?

A. About elections, you mean?

Q. You remember about two years ago, or perhaps a year and a half ago the America First Committee was sending out speakers such as Senator Wheeler and Colonel Lindbergh advocating non-intervention in the European war and other people were advocating intervention. Do you remember that?

A. No; I never talked to him about that.

Q. He never talked to you about it?

A. No.

Q. Did Mr. Bergmann ever tell you about whether he had any brothers or sisters?

A. No, he didn't.

Q. Do you know Mr. Huggins? [278]

A. I do.

Q. How long has he been down there?

A. About two years; maybe a little more.

Q. What is the name of that court that he has?

A. Oh, the Henrietta.

Q. The Henrietta Courts? A. Yes.

Q. That is almost opposite yours, isn't it?

A. It is about 30 feet difference. Across the street.

Q. Have you observed any difficulty between Mr. Bergmann and Mr. Huggins over Bergmann's tenants?

A. Why, yes. He was trespassing——

Mr. Dean: Just a moment, please.

(Testimony of John Horan.)

The Witness: —on the property there.

Mr. Dean: Just a moment, Mr. Horan. I object to this if it is a conclusion. If Mr. Horan saw some altercation there, I have no objection.

Q. By Mr. Jacobson: Have you seen any indication of any actual difficulty between Bergmann and Mr. Huggins?

A. Well, nothing beyond his tenants was trespassing on his property there.

The Court: Whose tenant was trespassing on whose property?

The Witness: Mr. Huggins runs a court there and——

The Court: Well, did you hear any argument between Huggins and Bergmann here about that fact? [279]

The Witness: Well, there were children in the courts and they used to go in there and, I guess, Mr. Bergmann didn't want them there.

Mr. Dean: I object to that.

The Court: Did he hear them say anything. That is the point.

Q. By Mr. Jacobson: Did you hear anything?

A. Hear Mr. Bergmann or Mr. Huggins?

The Court: Yes.

The Witness: Well, no, I didn't, beyond that.

The Court: You saw Mr. Bergmann chase the children off the property. Is that the idea? Or tell them to stay in their own back yards?

The Witness: That is something like it.

(Testimony of John Horan.)

The Court: Well, most people do that in neighborhoods where there are children.

You didn't hear Mr. Huggins and Mr. Bergmann have any words over it, did you?

The Witness: No, I didn't.

The Court: I see.

Q. By Mr. Jacobson: Did you ever talk with Mr. Huggins about Mr. Bergmann?

A. No, not that I know of.

Mr. Jacobson: I think that is all the questions I have, your Honor. [280]

Cross Examination

By Mr. Dean:

Q. Mr. Horan, you have stated about the time Mr. Bergmann got his citizenship papers that Mr. Bergmann said he was glad of it? A. Yes.

Q. Was that all that was said?

A. Well, he said he would like to be a citizen. He told me he had his papers.

Q. Yes.

A. And he said, "I am glad of it."

Q. Did he say anything else that you recall, or was that all he said?

A. I believe that is all. I don't believe there was anything more I could think of.

Q. In other words, he didn't tell you why he was glad of it if that was all he said?

A. He was glad to be a citizen.

Q. I mean, did he tell you why he was glad?

A. Well, he told me that in the elections here it was very bitter, but the next day everybody was

(Testimony of John Horan.)

shaking hands, and that they don't do that in the old country.

Q. He didn't tell you why he was glad other than what you said? A. No.

Q. In other words, he might have been glad to get them [281] for business reasons, so far as you know from that conversation?

A. I don't know anything about that, sir.

Mr. Dean: That is all.

Redirect Examination

By Mr. Jacobson:

Q. What did you say Mr. Bergmann said about shaking hands?

A. I didn't get you that time.

Q. After an election you said something about shaking hands.

A. Oh, I said that he said in this country they were very bitter while election was going on, but the next day they were all shaking hands with each other.

Q. Did he like that, did he say?

A. He liked that, yes.

Q. Did he compare that with what happened in Europe?

A. In the old country he said they didn't do that; they keep their bitterness, or whatever you call it.

Mr. Jacobson: No further questions.

Mr. Dean: No further cross.

Mr. Jacobson: That is all, Mr. Horan.

The Court: All right, sir.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Dungen. [282]

JOE F. DUNGEN,

called as a witness by and in behalf of the defendant, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your name.

The Witness: Joe F. Dungen, D-u-n-g-e-n.

Direct Examination

By Mr. Jacobson:

Q. Mr. Dungen, you live neighbors to Mr. Horan?

A. Yes, sir; next door neighbors.

Q. Next door neighbors? A. Yes, sir.

Q. How long have you lived at 41 Santa Clara Avenue? A. Since May 17, 1923.

Q. When you came down to that district was Mr. Bergmann there?

A. Yes, sir. He was filling up the lots there. There was nothing but sand around. He was working there every day.

Q. And of course, these courts of his hadn't been built yet, had they? A. No.

Q. Did you get acquainted with Mr. Bergmann?

A. Yes. I put in some dirt and went and borrowed his wheelbarrow just a few days after he was there to fill up the lawn.

(Testimony of Joe F. Dungen.)

Q. That is, you got acquainted by borrowing a wheelbarrow? [283] A. Yes.

The Court: I know you turned it back.

The Witness: I sure did.

The Court: You wouldn't be friends if you hadn't.

The Witness: Yes; I certainly did.

The Court: All right.

Q. By Mr. Jacobson: Does the place you run have a name?

A. The Blue Bird Courts.

Q. The Blue Bird Courts? A. Yes.

Q. Now, did you ever talk and visit with Mr. Bergmann over the years?

A. Oh, I visit with him quite often. You know, I go down there at nights. I live by myself and he lives by himself and I go to visit with him.

Q. Would he ever come and visit you?

A. Oh, yes.

Q. Both of you are single men, are you?

A. Yes, both single. He is single and I am single.

Q. So you became fairly good friends?

A. Oh, yes.

Q. May I ask you to give your age, Mr. Dungen?

A. Oh, I am 66. Was 66 on the 13th day of September, the same day as Pershing.

Q. You and General Pershing have the same birthday? [284] A. Yes.

Q. Did you ever talk with Mr. Bergmann about his having become a citizen? A. Oh, yes.

(Testimony of Joe F. Dungen.)

Q. Did you ever talk with him before he became one or after?

A. Oh, I talked with him lots before, and when he became a citizen he said, "Well, I got my citizenship papers, and I am glad I am a United States citizen."

Q. Were just you and he talking?

A. Yes, of course.

Q. Where did it take place if you recall?

A. Over there at his place.

Q. Give me as best you can what you said and what he said; all that you can remember.

A. Well, now, that is hard to do. That was in '37, I believe, when he got his citizenship papers.

Q. That is correct.

A. So I don't remember all the conversation we had. But I know he said he was glad he was a United States citizen. I remember that well. He said, "I have got my citizenship papers now."

Q. Did he give any reason as to why he was glad?

A. Well, he wanted to become a citizen of the United States.

Q. Now, did the expression on his face indicate he was [285] glad? A. Yes, sir.

Mr. Dean: Just a moment, please. I object to that as calling for a conclusion of the witness.

The Witness: Well, he did.

The Court: All right.

Mr. Dean: I ask that that be stricken.

The Court: That may be stricken.

(Testimony of Joe F. Dungen.)

Q. By Mr. Jacobson: Had you known before this day he told you—had you known he was applying for papers before he told you?

A. Yes. He told me he had applied to get citizenship papers. That was—oh, I just don't know how long ago that was—a couple of years before he got his citizenship papers, I am pretty sure, and he said he wanted to become a citizen.

Q. Just the two of you alone again?

A. Yes.

Q. Now, can you give us what you said and what he said about planning on becoming a citizen?

A. Well, he said he wanted to become a citizen of the United States. That is the best I can tell you what the conversation was, that he wanted to become a citizen.

Q. I know you didn't write all this conversation down at the time——

A. No, I didn't.

Q. ——that it is just what you remember after all these [286] years.

A. Yes, sure; it is a long time, you know.

Q. Did you ever have any talks with Bergmann about, what shall we say, the makeup of the United States Government, the general makeup of it, or the plan; how he liked or disliked it?

A. Well, he liked this country, I know. He always said so.

Mr. Dean: Just a moment. I ask that that be stricken.

The Court: Yes.

(Testimony of Joe F. Dungen.)

Q. By Mr. Jacobson: Just answer that yes or no, Mr. Dungen. A. Yes.

Q. Did you have more than one conversation about that?

A. Oh, yes, but how many I couldn't tell you.

Q. Well, can you tell me about the years?

A. Well, possibly in '36 or somewheres along in there.

Q. Well, now, what did Mr. Bergmann say about his opinion of the United States as a form of government?

A. Well, he liked the way—well, the way the laws and everything was in the United States. He liked it better than anywhere else, something to that effect. That is the reason he wanted to become a citizen.

Q. Did he ever talk to you about militarism?

A. No.

Q. He never did? [287]

A. No. I don't remember it.

Q. Did he ever tell you about any of his family, what his family consisted of?

A. He was talking about his mother once who lived in Germany; and I think he said he had a brother somewhere. I forget now where it was, but it has been quite awhile ago when he was telling me about that. His mother was in Germany.

Q. Was anything said about Mr. Bergmann going to visit her sometime?

A. He did say he would like to see her, but not

(Testimony of Joe F. Dungen.)

as long as there was a war going on, or something to that effect.

Q. Did you ever have any visits or talks with Mr. Bergmann after the United States got into the war last December? A. Oh, yes.

Q. Where did those conversations take place?

A. Over at his place and over at my place.

Q. You don't get around very much now, do you, Mr. Dungen?

A. No, I don't. I am crippled and can hardly walk.

Q. Who was present?

A. There was nobody but me and him.

Q. Can you place about how long after the attack at Pearl Harbor?

A. Oh, it was just—well, maybe a week or so.

[288]

Q. What was said by you and what was said by him as to the war or as to Pearl Harbor?

A. He was in hopes that the United States would soon clean up on the Japs and on Hitler, something to that effect; but then just how it all was, I don't know.

Q. At any rate he didn't express his approval of Japan doing what it had done?

Mr. Dean: I object to that on the grounds it is leading and also calling for a conclusion.

The Court: Yes.

Q. By Mr. Jacobson: Was any discussion had about Japan having made this attack on Pearl

(Testimony of Joe F. Dungen.)

Harbor and what he thought of it? Did he say anything about that?

A. Oh well, he said he hoped the United States would soon clean up on them. I know that.

Q. No, you have mentioned. Did you and Mr. Bergmann ever talk about Hitler?

A. Well, we would have to clean him up, too.

Q. That was the same conversation?

A. Yes.

Q. Did you ever talk about Hitler before Pearl Harbor?

A. Oh, I don't remember. I guess maybe we did. I couldn't say.

Q. Do you have any recollection; and definite recollection of having discussed Hitler?

A. No, I haven't. [289]

Q. Did you ever have any conversation with Mr. Bergmann in which he spoke of what disposition he was going to make of his holdings when he died?

A. Yes. He told me—I don't know how many times—that he was going to will it to the YMCA, the Salvation Army and the City of Long Beach, the——

Q. Did you ever see his collection of shells and things like that?

A. No, I never did. He had that in a garage and I never did go in there.

Q. They are packed up in boxes, are they?

A. Yes, sir.

Mr. Jacobson: I think that is all, Mr. Dean.

(Testimony of Joe F. Dungen.)

Cross Examination

By Mr. Dean:

Q. Mr. Dungen, you stated you have been laid up pretty much of late. Is that right?

A. What?

Q. You have been laid up pretty much of late?

A. Yes, but I go around with crutches. You know, it is right on the same street.

Q. You don't have any clear recollection of what exactly was said by Mr. Bergmann at these conversations that you have told us about, do you, Mr. Dungen? In other words, you are not positive he used certain words or as to the exact language that Mr. Bergmann used when he talked with you?

[290]

A. Well, I don't understand what you mean.

Q. Well, I mean is your memory clear?

A. Oh, yes, sure.

Q. Now, you said in speaking about Hitler, "He said something to that effect." A. Yes.

Q. Well, now, do you remember exactly what he did say, the exact words?

A. No, I don't remember this because it has been quite awhile ago.

Mr. Dean: I think that is all the cross examination.

The Court: All right, step down, sir.

(Witness excused.)

The Court: Call your next witness.

Mr. Howser: Mrs. Starks.

THELMA STARKS,

called as a witness by and in behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Thelma Starks.

The Clerk: S-t-a-r-k-s?

The Witness: Yes.

Direct Examination

By Mr. Howser:

Q. Mrs. Starks, where do you reside?

A. 2227 East Ocean, Long Beach. [291]

Q. How long have you resided in the City of Long Beach?

A. I have lived there 13 years. I beg your pardon, I have lived there 18 years.

Q. Are you employed?

A. I am in the employ of the City since an appointment in 1929. I am in the office of the City Prosecutor.

Q. You are in the office of the City Prosecutor?

A. Yes.

Q. Your official capacity there is what?

A. I have charge of the Social Service work, particularly the collection of support for children, so-called City Mother.

Q. Do you know the defendant, Walter Bergmann?

A. Yes, I have known him.

Q. How long have you known him?

A. I have known him for approximately 12 years.

(Testimony of Thelma Starks.)

Q. Do you recall the place of first meeting Mr. Bergmann?

A. Yes, it was a social function, I believe, in the fall of 1932.

Q. What occasioned you to remember meeting him at that time?

A. It was at a dance and we were introduced prior to the playing of the Blue Danube Waltz, a Strauss waltz, and we had many dances together that evening. The playing of [292] those particular pieces brought to the attention of both of us our mutual German extraction.

Q. Did anything particular occur on that evening?

A. Yes. Mr. Bergmann told me that, on the day following or shortly he was leaving for Tahiti.

Q. Did he tell you for what purpose?

A. Yes. He was going on an archeological search. That is, he was interested in a collection of shells and archeological specimens.

Q. Now, did anything else occur on that evening that you recall?

A. Yes. Mr. Bergmann professed his admiration for me personally, regretting he was leaving shortly, and asked me to accompany him. He proposed to me.

Q. Did you accept his proposal of marriage?

A. No, I did not.

Q. Now, when did you next see Mr. Bergmann?

A. After his return from the South Sea Island trip. He came into the office.

(Testimony of Thelma Starks.)

Q. Did you have occasion to see him occasionally?

A. Yes. Subsequent to that time he came to the office frequently. It was during the period when the Long Beach Harbor was being developed and Mr. Bergmann was vitally interested in it.

Mr. Dean: Just a moment. I object to that as being a conclusion of the witness. [293]

The Court: Fix the time.

The Witness: That was after 1934. It was between 1934 and 1939, during those years intervening.

Q. By Mr. Howser: Now, the Harbor was open to oil development during what year, to your knowledge?

A. I believe that was 1934, 1935. It was during the time there was a great deal of litigation as to the "One well to the acre" proposition. Mr. Bergmann was interested in that.

Q. During that period of time, regardless of the year, Mr. Bergmann frequented your office, did he?

A. Yes. He had occasion to frequent our office often because of his interest in that particular proposition.

Q. Did you have occasion to discuss with him or did you have conversations with him during that time?

A. Yes, because of his frequent visits. In addition to my duties as social worker, I contact everybody coming into the office.

Q. Approximately how many conversations

(Testimony of Thelma Starks.)

would you say you had with him during that time?

A. On an average of six a year or more.

Q. Can you tell us who was present during these conversations?

A. Whoever might happen to be waiting in the office at that time to speak to the attorney, but our conversation for the most part was more or less private because of the size of [294] the office and those waiting would be at benches, whereas he would be standing near my desk.

Q. What was the nature of those conversations?

A. They were general for the most part. He was very proud of his collection. I was very much interested in it myself. He brought into the office some valuable specimens. We talked of things in general for the most part, things that would be becoming and acceptable to office conversation.

Q. Now during that same period of time did you have any other conversations with him?

A. Frequently he would express his views as to current events and things of the day.

Q. Well, was there any mention of this proposal of yours before?

A. Yes, he has always referred to it regretfully on many occasions.

Q. What did he say, Mrs. Starks?

A. He has gone into a review of his life which is quite obvious to anyone who has heard the testimony to the effect that he is still a single man, and he regrets very much he has missed the happi-

(Testimony of Thelma Starks.)

ness a home, a wife and children would afford him, particularly in this country.

Q. Now, do you recall any conversation with Mr. Bergmann about his citizenship papers?

A. Yes, I do specifically. I hadn't seen him for some time and—— [295]

Q. Do you recall when that conversation was?

A. It was very soon after he received the papers. I was prompted as to the date, possibly about 1937, about three or four years ago.

Q. About 1937?

A. In so far as I recall.

Q. Where did this conversation take place?

A. It was a chance meeting. As I said, I hadn't seen him for some time and I met him just outside the City Hall.

Q. Where?

A. Immediately in front of the City Hall. He approached me rapidly—that is, he was going some place and I was hurrying to the bank—with his hand extended and he said, "Well, finally I am an American." And he said it in a very enthusiastic manner.

Mr. Dean: Just a moment.

Mr. Howser: That may go out, your Honor.

Q. Did you observe the expression on his face at the time he said that?

A. Yes, I did. He was happy and he looked at me very intently for approval.

Q. Do you remember having a conversation with

(Testimony of Thelma Starks.)

Mr. Bergmann approximately during the year 1939, when the war first broke out in Europe?

A. Yes, I remember one time. [296]

Q. Where was that conversation, Mrs. Starks?

A. My encounters with him were always on the street near and about the City Hall, both of us having our business downtown.

Q. Do you recall that particular conversation as to place?

A. On Pine Avenue near Broadway.

Q. Who was present?

A. The public in passing. It was on another of these chance meetings.

Q. What conversation took place at that time?

A. It was very brief and to the effect that he regretted exceedingly that war again was existent.

Q. Did he make any mention about the United States' participation in it?

A. Not specifically that. He seemed grieved.

Mr. Dean: Just a moment, please. This is a conclusion of the witness and I object to it.

The Court: What did he say?

Q. By Mr. Howser: Just tell us what he said.

A. "I regret from the bottom of my heart that this war condition exists." It was the equivalent of that.

Q. Have you ever had occasion to discuss with him subjects of intervention or isolationism?

A. Frankly—

Q. Just answer that yes or no, please. Have you?

A. Yes, briefly.

(Testimony of Thelma Starks.)

Q. When was this?

A. Upon those chance occasions when we would meet and converse for a few minutes.

Q. Before or after Pearl Harbor?

A. Prior to Pearl Harbor. [298]

Q. Can you tell us approximately how much in time previous to December 7th of '41 it was?

A. Within the year preceding it.

Q. I see.

A. Approximately a year preceding it.

Q. Can you tell us where this conversation took place?

A. I believe it was in the office. He came into the office to the Building Department, and while in the Building Department came to inquire as to my welfare because he hadn't seen me for about a year.

Q. What discussion did you have relative to those subjects at that time?

A. At that time I remember he mentioned admiration for Wheeler. He mentioned Lindbergh. The conversation was unsatisfactory to the extent it was very brief, and in my position, I can't encourage things of that sort in a business office; but I do remember the matter was on his mind at that particular time.

Q. Have you ever had occasion to discuss with Mr. Bergmann the condition of his leaving Germany?

A. On our initial meeting he——

(Testimony of Thelma Starks.)

Q. Just a moment, please. Just answer yes or no.

A. Yes, sir.

Q. When did that conversation take place?

A. At our initial meeting.

Q. That was on the evening that you met him in 1932? [299]

A. That is right.

Q. Now, who was presnt when you were discussing the circumstances under which he left Germany?

A. We were dancing and discussing different things.

Q. What was told you at that time?

A. It was a question on his part that I led for by making the remark that my grandfather had left Germany in his youth to escape military training. Mr. Bergmann proffered the information at that time that he was motivated by the same cause in leaving Germany to escape military training.

Q. Have you ever had occasion to see his shell collection and archaeological collection?

A. I have seen quite a few of the archaeological specimens. He brought a number of valuable things to the office and left a few as gifts.

Q. Do you recall any conversation with Mr. Bergmann as to the terms and conditions that he had those exhibits in the Los Angeles County Museum?

A. I recall him saying—

Mr. Dean: Just a minute. I object to this on the ground it is hearsay. It calls for that type of testimony, the statement by Mr. Bergmann.

The Court: Well, I will overrule the objection.

(Testimony of Thelma Starks.)

Mr. Howser: May the witness answer, your Honor?

The Court: You may answer.

The Witness: I beg your pardon. Do you mind repeating [300] the question?

Mr. Howser: Read the question, please.

(Question was read.)

The Witness: I remember that he——

Q. By Mr. Howser: You may answer that yes or no. A. Yes.

Q. When did that conversation take place?

A. It was a long time ago, just after they were placed in the museum. I couldn't be definite as to the time. He has made frequent reference to them, and I am not familiar with the conditions, except he did mean to leave them to the museum.

Q. These conversations were held where?

A. In the office; in my office.

Q. Do you recall any other person being present except yourself and Mr. Bergmann?

A. No. I must confine our conversations to ourselves because of the location in which they took place.

Q. I see.

What conversation did you have at that time?

A. I am sorry, I couldn't repeat it because I don't remember.

Q. Can you give us the substance?

A. As to his collections and what he intended to do with them?

Q. Yes. [301]

(Testimony of Thelma Starks.)

A. He intended, as I recall, to——

Mr. Dean: Just a moment, please. Are you going to give your opinion, Mrs. Starks?

The Witness: No.

Mr. Dean: If you are, I am going to object.

The Witness: It was my——

Q. By Mr. Howser: What did he tell you he was going to do with them?

A. I understood he was going to leave them——

Mr. Dean: Just a moment, please. That calls for a conclusion. The witness said——

The Witness: He told me——

The Court: Just a minute. Read the question.

(Question was read.)

The Witness: He told me he was going to loan them——

The Court: Overruled.

The Witness: ——exhibits throughout the country.

Q. By Mr. Howser: Did he mention any disposition of them on his death?

A. He mentioned the Los Angeles Museum.

Q. As beneficiary?

A. For the collection.

Mr. Dean: I object to this as leading.

Mr. Howser: It is leading, your Honor. I concede that.

The Court: Yes.

Q. By Mr. Howser: Can you tell us, Mrs. Starks, if [302] there was any mention to the time

(Testimony of Thelma Starks.)

of leaving these exhibits to the Los Angeles County Museum?

A. No, I can't. I do not remember.

Q. Have you had any occasion to discuss his property? A. Yes, I have.

Q. Have you had any occasion to discuss the disposition of that property upon his death?

A. Yes, I have.

Q. When?

A. In 1939 in the company of my father. I visited this property. At that time Mr. Bergmann offered it for lease.

Mr. Dean: Just a moment, please. I object to this on the ground it calls for a conclusion of the witness.

The Court: Yes.

Q. By Mr. Howser: Mrs. Starks, you say in 1939 you and your father went to Mr. Bergmann's home? A. Yes.

Q. And that is where the apartments were?

A. That is right.

Q. What occasioned your going there?

A. I was interested in securing the leasing of this property with the idea in mind that my father, who is past 65, might be able to care for them and it would add to his income.

Q. Did you have any conversation with Mr. Bergmann at [303] that time?

A. Yes, sir, I did.

Q. Can you tell us what you said, what your father said and what Mr. Bergmann said at this conversation?

(Testimony of Thelma Starks.)

A. Mr. Bergmann offered a good lease on the place. Do you want me to go into the terms?

Q. No, the terms are not important.

A. You just want the outcome of our conversation regarding the property?

Q. No, no. During that conversation did you have any discussion as to the final disposition of his property upon his death? A. Yes, I did.

Q. Now, tell us that portion of the conversation.

A. There was to be a specification in the lease with the possibility of purchase up to five years. If Mr. Bergmann died or if his death should occur, any time after that five-year period, one year after his death, one half of the property would go to me and one half of the property would go to the Salvation Army and the Y. M. C. A. I was to be one half beneficiary beyond that five-year term of the lease.

Q. Have you ever had occasion to discuss with Mr. Bergmann the subject of political matters?

A. Yes, I have.

Q. When did those occasions and conversations occur?

A. Upon his infrequent visits to the office. [304]

Q. Approximately how many times would you say you have had such conversations with him?

A. He would mention such matters.

Q. Approximately how many times would you say? A. Perhaps two or three times.

Q. During what period of time?

A. Since 1934.

(Testimony of Thelma Starks.)

Q. Previous to Pearl Harbor? A. Yes.

Q. Now, what conversations did you have in that respect?

A. I have referred to those in my previous testimony. There was nothing very definite.

Q. That is, you don't recall anything at this time in addition to what you have already testified to? A. No, I have nothing futher to add.

Q. Have you ever had occasion to discuss with Mr. Bergmann the form of government that we have in this country? You may answer that yes or no. A. Yes, sir.

Q. On more than one occasion?

A. On one occasion in particular.

Q. Do you recall when this was?

A. Yes. It was at the time he advised me that he had received his citizenship papers. The remark was passed by him that it was the land of opportunity, it had afforded him the opportunity and he had hoped that such might have [305] been afforded his children had he had the privilege of marrying and having a wife.

Mr. Howser: You may cross-examine, Mr. Dean.

Cross Examination

By Mr. Dean:

Q. Mrs. Starks, will you forgive me if I should ask you how old you were in '32?

A. I was 23.

Q. Who sponsored this dance which you and Mr. Bergmann both attended?

(Testimony of Thelma Starks.)

A. I was celebrating a birthday of a friend.

Q. It was not a dance sponsored by an organization, then, I take it? A. No, no.

Q. Your feeling for Mr. Bergmann on that evening was one of sympathy following his proposal. Is that an accurate way of putting it?

A. No, I took it lightly as any one would on such a short acquaintance.

Q. Now, as I recall, Mrs. Starks, you described the terms of the lease which said, if I am not mistaken, that you were to be made a beneficiary in some way under this lease.

A. Yes. Upon the expiration of a certain time after I had paid so much into the property and upon the expiration of one year following his death that I was to share half and half with the groups that I mentioned. [306]

Q. Yes.

A. In other words, to become part heir.

Q. Was there any description of the lease as to the sum of money you would receive, or does that depend upon the money the property would produce? A. That is right.

Q. During these conversations that you have had with him, Mrs. Starks, at these chance meetings, as you say, what would be the average length of the conversation? A. Five minutes.

Q. When you told us that Mr. Bergmann said when he received his citizenship papers that this was the land of opportunity, are you satisfied that

(Testimony of Thelma Starks.)

that is all you can recollect at this time as to what he said?

A. Yes, because the conversation was very brief.

Q. In other words, he didn't tell you what he meant by "opportunity," did he?

A. No, it was inferred to me, I was satisfied.

Mr. Dean: I am not interested in what you thought.

That is all the cross examination.

Mr. Howser: Your Honor, may I ask this witness another question?

The Court: No; I only allow one counsel to interrogate the witness. You can whisper or speak out loud to your associate counsel, but I only allow one person to question a witness. [307]

Mr. Howser: No, I was questioning this particular witness myself, your Honor.

The Court: Oh, I see.

Mr. Howser: And I overlooked the one question.

The Court: That is all right. I thought you were switching.

Mr. Howser: No, your Honor.

The Court: All right.

Redirect Examination

By Mr. Howser:

Q. Mrs. Starks, did you complete the making of this lease? A. No, I did not.

Q. Now, have you had occasion to talk to Mr. Bergmann since this proceeding that is now pending in court was filed against him?

A. Yes, I have.

(Testimony of Thelma Starks.)

Q. Where did this conversation take place?

A. Shortly after he received service he came into the office.

Q. You are referring to the City Prosecutor's office?

A. Yes.

Q. Who was present during that conversation?

A. Mr. Goosner, Spanish interpreter, and Doris Ivy, secretary.

Q. They are both employees—— [308]

A. Yes, they are.

Q. ——in the office? A. Yes, they are.

Q. Will you please tell us what was said at that time?

Mr. Dean: Just a moment. I object on the ground that it is irrelevant as to what conversation he had.

The Court: I don't see the materiality of any statement made subsequent to the institution of this action.

Mr. Howser: I thought, your Honor, that the conduct of the defendant and his attitude towards this proceeding would be very important as to whether or not he had placed any value on his citizenship papers, the effect it would have upon any person who had received such papers and who had received service of such pleadings.

The Court: The very fact he denies the allegations of the complaint under oath and his offering witnesses prove he is positively defending his rights. Private expression of opinion, admissions against interest may be admitted, but declarations

(Testimony of Thelma Starks.)

in his favor after the institution of the action are not permissible because they do not bear upon the issue before the court.

Mr. Howser: I was merely under the impression that they do. If that is the Court's ruling, that is fine.

The Court: What?

Mr. Howser: I was under the impression that such would be enlightening on this general issue. [309]

The Court: There has been no testimony. The only testimony as to what he said was that he said certain things to certain people. If you want to disprove those things, all right, I have no objection; but they are self-serving declarations, not going beyond the denials here. In fact, this answer is more than an answer, as you gentlemen who wrote it realize. You didn't write a legal document. You wrote the defense as dictated by him. He even gave his religious beliefs and what his beliefs are concerning Jesus Christ which are immaterial. You don't have to believe in Jesus Christ in order to be a citizen of the United States. All of that is in the answer; so I can't see how his statement to this witness of whom he thought sufficiently to ask her to marry him long after all the acts that have been testified to have taken place is material. If you want it, I will let you go into it, but it doesn't rise above the denial.

Mr. Howser: I will withdraw it, your Honor. That is all.

(Testimony of Thelma Starks.)

Mr. Dean: No further cross examination.

The Court: All right, Mrs. Starks.

(Witness excused.)

Mr. Dean: Your Honor, I understand counsel is going to offer a deposition. Is it the practice of this court to have it read question by question in the record?

The Court: In this particular case I would rather have it read. In an ordinary case I would usually say, "I can [310] read it faster than you can." However, I think the reading should be at the conclusion of the other testimony, all the oral testimony.

Mr. Jacobson: I was only inquiring if Mr. Dean had any objection to the deposition. Now, if you want it read, I will hold that up until the conclusion of the case.

The Court: Yes. I think the disposition is Mr. Kingman's.

Mr. Jacobson: Yes.

The Court: I know it is filed here. I have looked at it. That is Mr. Kingman's deposition, I believe.

Mr. Jacobson: Yes.

The Court: Of Cavalier and Company, investment brokers and bankers.

Mr. Jacobson: He is now with Plomb Tool.

The Court: I happen to know the gentleman. I handled a case on appeal involving the Cavalier Company and he was a witness. That was when I sat on the District Court of Appeals. I can't tell

you whether he won the case or lost it. I think he lost it. I know I wrote an opinion affirming the decision of the lower court.

Mr. Jacobson: I hope that isn't an omen.

The Court: Frankly, I don't even remember what the case was about. I know it was a long opinion that I wrote and he was a witness in the trial of that case.

Mr. Jacobson: Does your Honor want to take a short recess at this time? [311]

The Court: We will take a short recess.

(A short recess was taken.)

The Court: All right, gentlemen, call your next witness.

Mr. Jacobson: Mrs. Miller.

LOTTIE MILLER

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Lottie Miller.

The Clerk: L-o-t-t-i-e?

The Witness: Yes.

Direct Examination

By Mr. Jacobson:

Q. Is that Lotta or Lottie? A. Lottie.

Q. L-o-t-t-i-e? A. Yes.

Q. You live at 49 Mariposa Avenue?

(Testimony of Lottie Miller.)

A. I do.

Q. Where is that with reference to Mr. Dungen and Mr. Horan?

A. I am right back of Mr.—Huggins, did you say?

Q. Mr. Horan and Mr. Dungen.

A. I am east of them.

Q. With reference to the Bergmann property on West Seaside, where is that? [312]

A. I would be southwest, I think it is. Am I right? Let's see; well, I am right back of him, anyway.

Q. You are right back of Mr. Bergmann's property?

A. Yes.

Q. You are married, are you?

A. Yes, I am.

Q. And your husband is whom?

A. Ben Miller.

Q. What business is he in, Mrs. Miller?

A. Navy police officer.

Q. Are you in any business yourself?

A. I do beauty work and I manage apartments.

Q. That is sort of a neighborhood beauty service?

A. Yes, sir.

Q. You do it in your own apartment?

A. Yes, I do.

Q. Is that an apartment house where you live?

A. Yes.

Q. What is the name of it?

A. It belongs to King and Colbert.

Q. King and Colbert? A. Yes.

(Testimony of Lottie Miller.)

Q. Now, have you had an opportunity to become acquainted with Mr. Bergmann in the last few years?

A. In '38; February of '38.

Q. Do you remember the circumstances of your becoming [313] acquainted with Mr. Bergmann?

A. I just went over to see him. I thought he was kind of lonesome and I made some biscuits and I took them over to get acquainted with him.

The Court: That is a nice way to get acquainted with people.

Q. By Mr. Jacobson: Well, after you had brought him the biscuits the acquaintance ripened, did it?

A. It sure did. I used to see him every day.

Q. Did Mr. Bergmann ever come to your home?

A. Yes, many times.

Q. I presume you have had lots of visits with him in the last four years?

A. Yes, we have.

Q. During any of these visits and conversations, have you ever talked about Mr. Bergmann's views on the United States?

A. Oh, he told me he was an American citizen.

Mr. Dean: Just a moment, please. Would you fix the date?

Q. By Mr. Jacobson: You should have answered yes or no. A. Yes.

Q. Do you have any specific recollection when you had these conversations?

A. About '39. [314]

(Testimony of Lottie Miller.)

Q. 1939? A. Yes.

Q. Who was present? A. My husband.

Q. And yourself and Mr. Bergmann?

A. Yes, sir.

Q. Now, give us as best you can what was said by you or by Mr. Miller or by Mr. Bergmann with reference to the subject of American citizenship.

A. Well, I just asked him if he was an American citizen and he said, "Yes, I am." He said, "I am sure proud of it."

Q. Did he say anything else? A. No.

Q. Did you reply to that?

A. I said it was just lovely.

Q. Did you ever talk to him about his views on Hitler? Just answer yes or no.

A. Well, we had talked on national and international affairs.

Q. Well, let's take international affairs first.

A. Well, it was just an every day occurrence, conversation, that is all. I was always interested in Germany because my sister-in-law was of German descent and my cousins also were of German descent. I was interested in Germany and I wanted to know something about the country. I just wanted to know about the different parts of Germany. That is all our [315] conversation referred to.

Q. That is, the way Germany looks?

A. Yes, things like that.

Q. How the people lived over there?

A. Yes, things like that.

(Testimony of Lottie Miller.)

Q. But did you ever talk about the kind of government they have, such as under Mr. Hitler?

A. He never approved of the present government.

Mr. Dean: Just a moment, please. I ask that that be stricken on the ground it is a conclusion of the witness.

The Court: That is a little broad statement. You have to be a little more specific, if you remember, Mrs. Miller.

The Witness: He said he liked our way of government and he didn't like dictatorship. He liked the way we conducted our government and the way our president ran our government and he didn't like dictatorship. Also, he said he would like to be in a country where he could vote.

Q. By Mr. Jacobson: Did he say anything else?

A. No.

Q. Did he ever talk about his own family, that is, the family he had been born into?

A. I just asked about his mother; if his mother was living, and he said yes.

Q. Did he say what contact, if any, he had with her?

A. Oh, he sent her money, was all.

Q. Was there any conversation—this question must be [316] answered yes or no, Mrs. Miller—with Mr. Bergmann in which he made any comment about having sent money to Germany other than to his mother? A. No.

(Testimony of Lottie Miller.)

Q. Was there ever any conversation with Mr. Bergman about having investments in Germany?

A. No.

Q. That is, there were no conversations?

A. No, no conversations in regard to that.

Q. You spoke of having a relative that was of German descent?

A. Yes. I have a cousin that was German, Baron Von Mandershied, but he passed away.

Q. As to yourself, are you of German descent?

A. No, I am Spanish and English.

Q. I presume born in California?

A. California.

Q. Have you ever had any talks with Mr. Bergmann since the United States got into the war with Japan, Italy and Germany? Just answer that yes or no, please.

A. Yes.

Q. In any of these conversations has the subject of the war itself been discussed?

A. No.

Q. Has the subject of the attack upon Pearl Harbor been discussed in any of these conversations? [317]

A. No.

Q. Now, you said you had some talks on national affairs.

A. Oh, just little things in regards to the country.

Q. What particular national issue or issues do you recall having talked with Mr. Bergmann about?

A. Oh, just talking about different parts of the country, different parts of the world. This man has

(Testimony of Lottie Miller.)

traveled a great deal and I like to have people talk about those things.

Q. But I have in mind particularly national affairs of a political nature, Mrs. Miller.

A. Well, yes.

Q. Have you ever talked about them?

A. He said he didn't like dictatorship; he didn't approve of dictatorship. He liked the way our government was handled, the way our government was run, the way our President handled our government.

Q. Was there any discussion between you and Mr. Bergmann and possibly your husband at any time on the issue of isolationism? A. No.

Q. You never discussed that? A. No.

Mr. Jacobson: I think that is all, Mr. Dean.

The Court: Cross-examine. [318]

Cross Examination

By Mr. Dean:

Q. Mrs. Miller, you have testified, I believe just a few minutes ago that Mr. Bergmann told you that he liked the way our President ran the country.

A. Yes.

Q. Are you positive he said that?

A. Absolutely.

Q. Mrs. Miller, I show you a statement which purports to bear your signature. It is dated April 20, 1942. I will ask you if you have seen this before?

A. I did sign this, but I didn't read it.

Q. You have seen this before?

(Testimony of Lottie Miller.)

A. Yes, but I didn't read the statement when I signed it. I didn't read it.

Q. Well, now,—

A. But I did tell the F.B.I. man there was nothing there that hurt Mr. Bergmann.

Q. Just a moment. I think you have answered my question.

A. O.K.

Q. Any explanation you want to give to your answer, I am sure the Court will give you permission.

The Court: I don't know what is in the statement. First find out whether the statement contradicts something she is saying now. [319]

Q. By Mr. Dean: This is your signature?

A. Yes, sir.

Mr. Dean: I offer this as Government's next exhibit, your Honor.

The Court: Let me see what it is.

(Document passed to the Court.)

Mr. Dean: May I withdraw the offer for the purpose of asking an additional question?

The Court: Go ahead.

Q. By Mr. Dean: You say you visited Mr. Bergmann's apartment in a friendly and sociable way, is that right?

A. Yes.

Q. Did you ever observe any German magazines or literature around his apartment?

A. No.

Q. You never did?

A. No.

(Testimony of Lottie Miller.)

Mr. Dean: I renew my offer, your Honor.

The Court: Just a minute. Has counsel seen it?

Mr. Dean: Yes.

Mr. Howser: Mr. Jacobson has not seen it, your Honor. I did, and I tried to convey to him, with the best of my recollection, what it was.

The Court: You may take a look at it before I rule on it.

Mr. Howser: Thank you. [320]

The Court: Any objection?

Mr. Jacobson: Yes, the objection is the witness has testified she did not read the statement before signing it.

The Court: Well, I think in view of the denial you will have to lay further foundation.

Mr. Dean: Very well, your Honor.

The Court: I will admit it for identification only.

The Clerk: Government's Exhibit 3, for identification.

(The document referred to was marked Government's Exhibit No. 3, for identification.)

Q. By Mr. Dean: Mrs. Miller, was this document handed to you before you signed it?

A. He just held the book out to me like that and I just signed it. I never even read it. I said, "There is nothing there that will hurt Mr. Bergmann."

Q. Just a moment.

Did you take the paper in your hand at all?

A. No.

Q. You did not?

(Testimony of Lottie Miller.)

A. No.

Q. But you recall signing it?

A. Yes.

The Court: Let's have the paper a minute.

Look at this paper here. Is there anything there that you say you didn't say? Just read it to yourself now. I [321] think that will settle the question and lay the foundation better than anything else.

The Witness: Can I talk a little bit?

The Court: Is there anything on there? You see, that is a statement.

The Witness: Yes.

The Court: Is there anything there that you didn't actually tell the agent?

The Witness: I didn't say that he sent money back to Germany. I said he sent money to his mother in Germany and I said I was told there were magazines in the apartment. I said, "I was told there were magazines but as far as me seeing them, never."

Q. By Mr. Dean: Mrs. Miller, do you recall the visit of the agent to your home?

A. Yes.

Q. How long was he there?

A. Just a short while. I don't know how long.

Q. Can you approximate it for us? What is your best guess? Half an hour or an hour?

A. Oh, no, not over fifteen minutes.

Q. Fifteen minutes you would say?

A. Yes.

Mr. Dean: Very well, your Honor. I will renew my offer and lay a foundation later.

(Testimony of Lottie Miller.)

That is all the cross examination. [322]

The Court: All right, step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Geiselman.

DANA D. C. GEISELMAN

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Dana D. C. Geiselman.

Direct Examination

By Mr. Jacobson:

Q. Mr. Geiselman, what is your occupation?

A. Assistant trust officer of the California Trust Company here in Los Angeles.

Q. I wonder if you would raise your voice a little bit. It is hard to hear you.

A. Assistant trust officer of the California Trust Company here in Los Angeles.

Q. What is your profession?

A. Attorney.

Q. Are you admitted to practice in what states?

A. Nebraska and California.

Q. In the course of your legal career have you occupied any public office in Nebraska?

A. I was County Attorney in my home county for two terms. [323]

(Testimony of Dana D. C. Geiselman.)

Q. During what period of time was that?

A. 1912 and four years thereafter.

Q. From '12 to '16?

A. That is right.

Q. Does that office correspond to the office of District Attorney in California?

A. It does.

Q. During World War I were you in the armed forces of the United States.

A. I was.

Q. With what rank were you discharged?

A. I was an ensign in the United States Navy.

Q. Are you now an officer in the Reserves?

A. No, sir.

Q. Do you know Walter Bergmann?

A. Yes, sir.

Q. How long ago did you meet him?

A. I first saw him in 1926.

Q. That would be about 16 years ago?

A. Yes, sir.

Q. Do you recall the circumstances of meeting him?

A. At that time I either met him casually or just saw him in a transaction that was being handled by the Trust Company in which Mr. Bergmann was one of the parties. I later became acquainted with him better in 1936 which was ten years thereafter. [324]

Q. During the period of '26 to '36 did you have any particular contact with him?

A. I don't recall that I had.

(Testimony of Dana D. C. Geiselman.)

Q. Now, beginning with 1936 did an acquaintance develop, any personal acquaintance?

A. Yes.

Q. Since 1936 have you had visits or conversations with Mr. Bergmann?

A. A great many.

Q. Have you had many? Do you have any idea as to about how many?

A. Oh, maybe eight or ten a year.

Q. I suppose a good many of these were business conferences?

A. Most of them.

Q. Now, in any of these conferences or conversations were subjects other than business discussed?

A. Many times.

Q. Did you ever discuss with Mr. Bergmann his views of the United States?

A. Oh, he——

Q. Answer that yes or no, please.

A. He told me about how glad he was——

Mr. Dean: Excuse me just a moment.

The Court: You must lay a foundation for further inquiry. Fix the date first. Just say, "Yes" and he will ask you when. [325]

The Witness: Yes.

Q. By Mr. Jacobson: When?

A. Commencing in 1936 and continuing through from year to year.

Q. Had you had more than one discussion about that subject?

A. Yes.

(Testimony of Dana D. C. Geiselman.)

Q. Now, what was said by Mr. Bergmann in reference to the type of government we have here?

Mr. Dean: Excuse me just a moment. Can't we fix this a little more definite as to time?

The Court: Yes.

The Witness: Well, on many different occasions from 1936 up until probably six months ago wherein he would indicate——

Mr. Dean: Excuse me just a moment. I don't want to be difficult, your Honor, but I think this should be more firmly fixed if he is going to relate a specific statement or utterance.

The Court: He said in the last six months.

Let's allow the witness to make the general statement and then we will see if he can fix more generally the date.

Go ahead and tell us what he said.

The Witness: He would compare how liberal our form of government was to the forms of government in Europe; and what a benefit it was to be able to live under this form of [326] government as against those existing in European countries where there were the old time hatreds of one country against another that existed for generations and couldn't be erased.

He was so gratified to be able to do business and transact business with people generally here within the United States without any reflection upon him because his accent was different from ours here in the United States; and how he could rely largely upon the honesty of people here in the United States

(Testimony of Dana D. C. Geiselman.)

and the lack of vindictiveness by people because he may or may not have been of their particular race.

Throughout the many conversations he pointed out how difficult it was to transact business in Europe as compared with the ease with which we transact business here in the United States.

Q. By Mr. Jacobson: Excuse me, Mr. Geiselman. Did the subject of Mr. Hitler ever come up?

A. Yes.

Q. Do you recall any conversations in which Mr. Bergmann expressed his views of Mr. Hitler?

A. Well, he told me that he thought Hitler had the right idea as to the development of the health of the youthful people in Europe. He told me that his——

Mr. Dean: Excuse me, your Honor. Can we have the time fixed for this?

The Court: I will allow the other statement to go in because it related to your business transaction.
[327]

The Witness: Yes.

The Court: But now we are getting down to specific questions on Hitler. That is important and if you can fix the date it would be better.

The Witness: I would judge that that conversation was either late in '39 or '40.

Q. By Mr. Jacobson: Where did it take place, Mr. Geiselman?

A. That took place in his home where he resided in Long Beach.

Q. Who was there?

(Testimony of Dana D. C. Geiselman.)

A. Just the two of us when I stopped there.

Q. That was late in '39 or early '40?

A. That is right.

Q. Now, will you tell the substance of what was said about Hitler?

A. Well, he said he thought he had the right idea about developing the health of the youthful people in Germany, teaching them to abstain from the use of tobacco and liquor. Bergmann was bitterly opposed to both of those things according to his expressions. He did tell me that he thought that Hitler was all wrong about trying to glorify the military side of the training of the young people in Germany due to the fact that it continually kept carrying forward the intense hatred that different countries had for each other in Europe. [328]

He told me that he didn't think Hitler could ever be considered a good leader for Germany because, first, he was an Austrian. He couldn't see the view point of the German as such, and he apparently felt and said that he thought he was doing it largely for his own personal aggrandizement. He called him "bigheaded" and expressions similar to that; sort of a hypnotic spell that he thought he was in.

Q. Did he say anything further about Mr. Hitler here in that conversation?

A. I don't recall that he did.

Q. Now, this conversation, of course, was prior to any participation by the United States in the present war?

A. That is right.

(Testimony of Dana D. C. Geiselman.)

Q. Did you ever talk to Mr. Bergmann or did Mr. Bergmann ever talk to you about what his opinion was of the European social system, castes, nobility, aristocracy?

A. Yes, he talked to me about that on many occasions.

Q. Can you recall any specific time?

A. Well, one of these times might have been the same time that I referred to when I stopped at his home and subsequent and prior thereto. I just can't recall the date.

Q. What did he say about it?

A. The substance of his statements were that he disliked the idea that just because a man was born the son of some prior great man was any reason why he should be in the upper rungs of the ladder, as he called it, regardless of [329] whether he had the ability of the foundation to be there. He disliked the class distinctions that existed in Europe. He felt that, or stated, rather, that he felt a man should progress as a result of his own ability rather than by virtue of his birth.

Q. Did he tie that last statement into anything in connection with the United States?

A. No, sir; he said—no.

Q. Now, do you remember when Mr. Bergmann got his certificate of citizenship?

A. No, sir, I do not.

Q. Did Mr. Bergmann ever tell you that he had become a citizen of the United States?

A. Yes, sir.

(Testimony of Dana D. C. Geiselman.)

Q. Do you remember when that was?

A. I don't recall that he told me when he got it, but I know he told me he was a citizen of the United States.

Q. Where did that conversation take place?

A. I am sorry, but I don't recall.

Q. You do recall there was such a conversation?

A. Yes. He told me that.

Q. Do you recall whether anyone was present besides you and Mr. Bergmann?

A. No.

Q. What, if anything, did Mr. Bergmann say about his being a citizen of the United States? [330]

A. This conversation was in 1938, as I recall it, and it occurred at a time when he told me that he contemplated returning to Tahiti or some of the South Sea Islands to pick up more shells comparable to the exhibits he had out at the Exposition Park Museum and over at the Los Angeles Museum.

He told me that by reason of the fact he was a United States citizen he would be treated with respect and consideration in those Islands far above and beyond that which a German would be treated there.

He told me how in some of those Islands they had a tendency to crowd the people of German descent off of the walk and that he being a citizen of the United States would command respect and be given consideration. It was more in the nature of a comparative statement.

(Testimony of Dana D. C. Geiselman.)

Q. You mentioned his collection of shells. You are familiar with those collections, are you not?

A. He spoke of them many times.

Q. Did you ever discuss with Mr. Bergmann what plans he was making of disposing of his estate?

A. I became quite well acquainted with him. He solicited my business advice and in return I solicited of him the possibility of the Trust Company being named as executor under his will, or if he was going to the Islands for any length of time that we be named trustee and look after his property and assets while he was away.

In this discussion of the terms of the will he told me [331] he had a will that he had drawn up himself. I suggested that some time, perhaps, that was not the best, there might be things that could be improved upon and suggested that he have counsel draw up a will and that we be named. In that conversation arose the question of the disposition of his property of which the shells in these exhibits were a part, he having told me he had loaned them to the County and to the Agricultural Association.

Mr. Dean: May we have the time of this conversation, counsel?

Q. By Mr. Jacobson: Can you give the time approximately of this discussion?

A. That was about the time that he contemplated making the trip to Tahiti, probably around 1938; although I solicited this business many times thereafter and the question of disposition of his property arose in each of the discussions. Those discus-

(Testimony of Dana D. C. Geiselman.)

sions were probably every time I met him right up until about six months ago, I would say.

Q. Well, in all of these discussions did Mr. Bergmann's plan of disposition remain approximately the same? A. It did.

Q. Will you state what he said his plans were?

A. He told me he intended to give the exhibits to the Sixth Agricultural District where he had loaned one and to the County on the other one. He told me that he was going to leave—— [332]

Mr. Dean: Excuse me a minute. May I have the date of this?

The Witness: About 1938.

Mr. Dean: I am sorry.

The Witness: About 1938.

That was the first discussion, but the discussion as to the disposition of the property occurred several times thereafter when we would discuss the terms of a proposed will.

He wanted to give the property where he lived to the City of Long Beach for a park due to a lot of work he had done there and some plants that he had brought back from the Islands that he planted and that he had acquired since.

He wanted to give a considerable portion of his assets to the Salvation Army and he wanted to give a considerable portion of his assets to the Y.M.C.A. down at Long Beach. The fact is that disposed of all of it.

Q. By Mr. Jacobson: That is, perhaps, except minor bequeaths?

(Testimony of Dana D. C. Geiselman.)

A. He told me his mother was very old, was living in Germany and probably there wouldn't be further need for her. That was the only outside individual or place he mentioned to me about the disposition of his estate.

Q. Did he mention where his properties were located? A. Sure.

Q. What did he say?

A. I knew them. He told me where they were. He had [333] that property where he lived there and——

Mr. Dean: Just a moment: I am going to object to this as being hearsay as to where the property was located.

The Witness: I beg your pardon?

The Court: I think it is all right. Go ahead. You may answer.

The Witness: He had the real property in Long Beach and he had these stocks and bonds with the brokers over on Spring Street.

Q. By Mr. Jacobson: During your acquaintance with Mr. Bergmann did you become acquainted with his policy of investment in stocks and bonds, the type of company or the nationality of the companies?

A. He discussed with me on several occasions the purchases he had made.

Q. Do you recall any specific time?

A. Well, those purchases started shortly after December of 1936 and continued on down to probably a year or a year and a half ago.

Mr. Dean: Just a moment. I ask that that be

(Testimony of Dana D. C. Geiselman.)

stricken and I object to any further statement on the purchase of stocks and bonds by Mr. Bergmann as being immaterial.

Mr. Jacobson: May I disclose my purpose to the Court?

The Court: Yes.

Mr. Jacobson: Not to show his will, but to show what his fixed policy of investing was; investing only in American [334] owned companies.

The Court: You are meeting an issue that isn't presented here. Of course, he would invest in American companies. They are sound investments. You didn't expect him to invest in German companies, did you, that had no value except the promise of the government and only the sword of the Germany Army to support them.

Mr. Jacobson: Of course, there were Dutch, English and South American investments.

The Court: I don't think that is at issue here.

Mr. Jacobson: Very well.

The Court: I admit he is a good business man. In fact, the testimony of this witness shows he is a good business man. A man may be willing to do business with America because Americans are honest and all that and still have other ideas when it comes to politics. I can't see any materiality in this at all. I think this witness has stated the nature of his relationship. It shows me what they were talking about, what he consulted about, and that is sufficient without going into details. I don't think it is an indication of Americanism at all, a man who invests

(Testimony of Dana D. C. Geiselman.)

in American companies any more than it is an indication of lack of Americanism if he invested in foreign companies. A lot of American companies have agencies even in Germany. The Ford Company has an agency in Germany and all of the big concerns have agencies in Germany which were confiscated by the German government long before we [335] entered the war. But that isn't any indication one way or the other.

Mr. Jacobson: The only thought I had, you have to build up a picture of the man as the government has by a statement here and a statement there.

The Court: I understand that, but the government hasn't brought in anything relating to his business.

Mr. Jacobson: As I recall the testimony yesterday, the government stressed the fact that the man had great securities in Germany. As I understand it, one witness said he had enough securities in Germany to keep him all his life.

Mr. Dean: There was one statement by one witness, your Honor, that he had invested in Germany. I don't think this testimony disproves that fact, however.

The Court: Well, let's get back to the particular question. I think we took more time discussing it than it was worth. What is the question?

(Question was read.)

The Court: Well, I will tell you this: I will allow the witness to answer the question, but I don't want you to go into details.

(Testimony of Dana D. C. Geiselman.)

The Witness: We were discussing the merits Shell Oil. Mr. Bergmann stated that it was controlled largely by European countries and he wouldn't have any stocks or bonds wherein there was any influence or any ownership of the companies in Europe. [336]

The Court: Did you tell him what the ownership of Shell was; what nationality?

The Witness: No, sir.

The Court: What?

The Witness: No, sir.

The Court: Did he know?

The Witness: He said it was controlled by the Dutch Shell in Europe.

The Court: All right.

Q. By Mr. Jacobson: I don't know if I asked you this or not, but did you have any conversations about the war after the Pearl Harbor incident?

A. Not to my knowledge.

Mr. Jacobson: That is all.

Cross Examination

By Mr. Dean:

Q. Mr. Geiselman, is that the way you pronounce your name? A. Yes.

Q. You are not of German extraction, are you?

A. My father was born in Stack County, Ohio.

Q. I see; that answers my question.

Are you a member of or a sympathizer with the America First Committee, at any time, Mr. Geiselman? A. No, sir.

Q. You were not? [337] A. No, sir.

(Testimony of Dana D. C. Geiselman.)

Q. I take it that your conversations with Mr. Bergmann occurred chiefly in your office at the Trust Company? A. At his home also.

Q. Would you say you visited his home frequently?

A. I had occasion to go to Long Beach about four times a year and I would usually stop by and say hello and solicit his business.

Q. Were the associations or business dealings you had with him solely in connection with the Trust Company, or did you have some private transaction with him?

A. I had no private transactions. At the time he was discussing about going away he did offer to sell me the property that he had where he lived.

Q. Did you consummate the sale?

A. No, sir.

Q. You did not? A. No.

Q. I take it, though, at various times in your capacity as an officer of the Trust Company, you have engaged in transactions with Mr. Bergmann to your mutual profit, that is, to the profit of the Trust Company and the profit of Mr. Bergmann?

A. He was a customer of the Trust Company in the escrow department and we handled several escrows.

Q. You testified, although you haven't been able to [338] fix the date too precisely, regarding talks you had with Mr. Bergmann in which he told you of the fact that in America he could carry on busi-

(Testimony of Dana D. C. Geiselman.)

ness with people and rely upon their honesty. Did he say that? A. That is right.

Q. That he could do so without any reflection being cast upon himself. Is that right?

A. By reason of his decided German accent.

Q. He didn't make any exception to that, did he? He didn't say "except in Long Beach"? In other words, that was true with respect to all his business dealings, wasn't it?

A. He was talking generally.

Q. With respect to your conversation with him which you said occurred late in 1939 or early in 1940 concerning Adolph Hitler, you stated, if I am correct in saying this, that Mr. Bergmann stated that Hitler had done a good deal for the health of the German youth. Is that correct?

A. He felt that his plan of building up the health of the youth was a good idea.

Q. Did you have any discussion with him at that time concerning the youth of Germany in the march into Poland or the other military campaigns?

A. He was bitter about using those young men.

Q. I mean did you have any conversation with him? A. Yes.

Q. Concerning the march into Poland? [339]

A. No.

Q. You did not? A. No.

Q. Did he ever state that Hitler was a genius to you? A. He never did to me.

Q. When he referred to the caste system that you have discussed, Mr. Geiselman, he used the general term "Europe", did he not?

(Testimony of Dana D. C. Geiselman.)

A. That is right.

Q. In other words, he did not refer to any specific country in Europe?

A. He was talking about the countries in Europe.

Q. In Europe generally? A. That is right.

Q. With respect to the discussion concerning the will that you have related to us, you did not, in fact, draw a will for him, did you?

A. We did not. We don't draw wills, and I suggested he have his own attorney prepare the will and only sought the business that we be named as executors.

Q. With reference to your discussion with him concerning a leaving of his archaeological collections, are you fairly sure that that conversation took place sometime during the year 1938, or about that time?

A. That same discussion about where he was going to leave his property came up almost invariably every time I [340] solicited for the Trust Company to be named as executor.

Q. When he said he was going to leave his collection to somebody, when was the first conversation that you had with him concerning that?

A. In 1937.

Q. 1937? A. Yes, sir.

Q. Do you recall distinctly he said he was going to leave at least a portion of it to the Los Angeles County Museum?

A. In '37 and it continued on down.

Q. He repeated that several times?

A. Yes, sir.

(Testimony of Dana D. C. Geiselman.)

Q. He was going to give them his property?

A. He was going to give them his property, yes.

Mr. Dean: That is all the cross examination.

Mr. Jacobson: That is all.

The Court: In the discussions that you had with him about Hitler youth, was anything said by either of you about the fact that the United States had a similar program devoid of the militaristic trimmings in the C. C. C. Camps?

The Witness: Judge, that was the reason he explained to me he wanted to leave so much of this property to the Y.M.C.A. as well as the Salvation Army—but particularly to the Y.M.C.A.—because it built up the health and stressed it with so much importance. [341]

The Court: I see. All right.

Mr. Dean: No further cross examination.

(Witness excused.)

Mr. Jacobson: I have another witness. Do you wish a recess, your Honor?

The Court: No, no; let's go on. How many more witnesses have you?

Mr. Jacobson: I have one more today and I think eight more tomorrow.

The Court: Let's go on with another witness.

Mr. Jacobson: Mr. Ellis.

